January 23, 1975

Honorable and Mrs.
Harry T. Alexander
5701 Utah Avenue, N.W.
Washington, D.C. 20015

Dear Judge and Mrs. Alexander:

Mrs. Hobson and I, sincerely regret we were unable to attend the informal chat in your home to meet your friend the Reverend Dr. Jesse L. Jackson on Sunday, January 12, 1975.

Please accept our apologies.

Sincerely,

Julius W. Hobson
Council member at Large

LM:bhs

Maybe

Superior Court
of the District of Columbia
Washington, D. C. 20001

Harry T. Alexander
Judge

January 7, 1975

Honorable Julius W. Hobson, Sr.
District of Columbia City Council
District Building
Washington, D. C. 20004

Dear Mr. Hobson:

Please meet my friend the Reverend Dr. Jesse L. Jackson during an informal chat in my home between 7:30 and 8:30 p.m. on Sunday, January 12, 1975.

Sincerely,

Harry T.

Harry Toussaint Alexander

RSVP
5701 Utah Avenue, N. W.
727-1616

Mail Routing Slip

Date: 1-14-75

To: Council member Julius Hobson

Comments: Will Mr. Hobson attend

Letter - sorry we missed your engagement

Sandy Brown:

February 27, 1975

Honorable Les Aspin
House of Representatives
Washington, D.C. 20515

Dear Mr. Aspin:

Because of your interest in the subject of police surveillance of political activities, I am enclosing the attached memorandum. I hope you will give us your support.

Julius W. Hobson

Enclosure

Fred Aranha

Lorraine McCottry

March 13, 1975

Purchase of Envelopes

This is a request to have three boxes of envelopes picked up (and purchased) from the Engraver for Mr. Hobson on Monday, March 17. I checked with the Engraver and he does have the envelopes in stock.

k They are size of the attached, without identification of a councilmember.

Thank you.

Mr. Fred Aranha, Support Services

Julius W. Hobson, Councilmember

May 19, 1975

Request for Publication

Would you please order a subcription to "Just Economics" for reference material for my committee.

See attached order form on page 11. (Please return this attachment to me.

June 11, 1975

Mr. Kenneth L. Adams
315 Twelfth Street, Southeast
Washington, D.C. 20003

Dear Mr. Adams:

Thank you for your letter of May 22 concerning your support for Bill Number 1-44, the Marijuana Reform Act.

I believe that the present penalties for possession of marijuana exceed the seriousness of the offense and therefore the present law should be examined closely. The Committee on the Judiciary will be holding public hearings on this piece of legislation on July 16 in the Council Chamber. I will be giving the legislation careful consideration when it comes before the City Council for a vote.

Sincerely,

Julius W. Hobson
Councilmember at large

June 11, 1975

Mr. Kenneth L. Adams
315 Twelfth Street, Southeast
Washington, D.C. 20003

Dear Mr. Adams:

Thank you for your letter of May 22 concerning your support for Bill Number 1-44, the Marijuana Reform Act.

I believe that the present penalties for possession of marijuana exceed the seriousness of the offense and therefore the present law should be examined closely. The Committee on the Judiciary will be holding public hearings on this piece of legislation on July 16 in the Council Chamber. I will be giving the legislation careful consideration when it comes before the City Council for a vote.

Sincerely,

Julius W. Hobson
Councilmember at large

Kenneth L. Adams
315 Twelfth Street, Southeast
Washington, D. C. 20003

May 22, 1975

Councilman Julius W. Hobson
D. C. City Council
Room 527
District Building
Washington, D.C. 20004

Dear Councilman Hobson:

I am writing to express my strong support for Council Bill #144, the Marijuana Reform Act of 1975, and to urge you to support the bill.

I would appreciate your advising me whether or not you will vote for the bill, and if not, what changes you would require before supporting it.

Sincerely,

Kenneth L. Adams

Kenneth L. Adams

Kenneth L. Adams
315 Twelfth Street, Southeast
Washington, D. C. 20003

Councilman Julius W. Hobson
D.C. City Council
Room 527
District Building
Washington, D.C. 20004

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20004

June 19, 1975

JULIUS W. HOBSON
Councilman at Large

Mr. Sam Abbott
Room 1015 Dupont Circle Bldg.
1345 Connecticut Avenue, N.W.
Washington, D. C. 20036

Dear Sam:

Enclosed is a copy of the hearing notice concerning the additional transfer of highway funds scheduled for Thursday June 26, 1975 at 10:30 A. M. and 2:00 P. M. in the Council Chambers.

I thought you will want to testify. Let me know if I can be of help.

Sincerely,

Julius

Prompt. C. Alley Closing

4651 Kenmore Drive, N. W.
Washington, D. C. 20007

July 11, 1975

The Honorable Rev. Jerry A. Moore
District of Columbia City Council
14th and E Streets, N. W.
Washington, D. C. 20004

Dear Rev. Moore,

By now, I imagine you and the members of the Transportation and Enviromental Affairs Committee have been flooded with correspondence regarding the closing of the alley in Square 140 for an outdoor cafe for E. J. O'Riley's. On one hand I did and on the other I did not have something to do with this correspondence. The gentleman who is mostly responsible is Donald M. Sheehan, a part time employee at E. J. O'Riley's and a student at Georgetown University. I had been keeping him up to date with the proposed closing and had promised him a full time job if it were closed by this summer.

Don is a very bright kid and was incensed at the delays. He felt that with home rule the city should be more responsive to the citizens. It was his idea (and with my permission) to organize a letter writing campaign to petition our elected officials. He wanted to get our customers involved, however, I felt that the reasons were too complex and it might be burdensome to them. Otherwise, I gave him my files and a free hand. Frankly, I think he did a good job.

I agree with most everthing he says except as to estimated additional empolyees. He states four to five. I estimate twice that amount because of the lunch and dinner shifts. Furthermore, I am investigating the possibilities of having a New Orleans type balcony with storm windows. I am advised that such are popular in New York City. This would not be a permanent structure, however, it would again double my estimate of additional employees all year long.

Since this is an original alley, I have agreed to pay the fair market value for the land. I realize that my petition is an unusual one, however, it is a proper one. It would be much easier to say, "No" but I would truly appreciate your committee studying the file which is complex and base its decision on merit. I will be happy to answer any questions.

Very truly yours,

MEL

Matthew E. Donahue

cc: The Honorable Nadine P. Winter
The Honorable Julius W. Hobson

File Antitrust Enforcement

815 Connecticut Avenue, N. W.
Suite 206
Washington, D. C. 20006

July 24, 1975

District Building
14th and E Streets, N. W.
Washington, D. C. 20004

Councilman Marion Barry
Councilman David Clark
Councilman Rev. James E. Coates
Councilman Arrington Dixon
Councilwoman Willie J. Hardy
Councilman Julius Hobson, Sr.
Councilman Rev. Douglas Moore
Councilman Rev. Jerry A. Moore, Jr.
Councilwoman Polly Shackleton
Councilman William R. Spaulding
Councilman John A. Wilson
Councilwoman Nadine Winters

Dear Councilmen:

On June 17, 1975, the District of Columbia Bar mailed to you a copy of a study on the status of public antitrust enforcement in the District of Columbia. The study recommended the enactment of certain antitrust legislation by the District.

It appears that several members of the Council and its Staff never received copies intended for them. Accordingly, we are mailing a duplicate copy of the report, as enclosed, to each member of the Council.

Sincerely yours,

Douglas V. Rigler, Chairman
Committee on Antitrust and Trade Regulation

Timothy J. Waters, Chairman
Committee on Antitrust and Trade Regulation Agency Oversight

Enc.
cc: Mr. Robert A. Williams, Secretary to the Council
Mr. Rodney A. Coleman, Executive Assistant to the Chairman

STUDY ON THE STATUS OF PUBLIC ANTITRUST ENFORCEMENT IN THE DISTRICT OF COLUMBIA

PREPARED BY

COMMITTEES 1 and 3
Division II
District of Columbia Bar

Douglas V. Rigler
Chairman
Committee on Antitrust and
Trade Regulation

Timothy J. Waters
Chairman
Committee on Antitrust and
Trade Regulation Agency Oversight

Michael E. Friedlander
Committee Study Coordinator

THIS REPORT HAS BEEN APPROVED
BY THE STEERING COMMITTEE OF DIVISION II.
THE BOARD OF GOVERNORS OF THE DISTRICT OF COLUMBIA BAR
HAS NOT APPROVED OR DISAPPROVED THE REPORT.

TABLE OF CONTENTS

Introduction

The District of Columbia Bar Committees on Antitrust and Trade Regulation (Committee 1) and Antitrust and Trade Regulation Agency Oversight (Committee 3) have conducted a joint study project on the status of public enforcement of the antitrust laws of the District of Columbia in an effort to determine if the District of Columbia should enact provisions similar to the existing federal antitrust laws.

At present, the D. C. Code contains no major provision prohibiting restraints of trade within the District. The federal antitrust agencies have jurisdiction over practices occurring within the District. The District of Columbia also, under Section 3 of the Sherman Act, can bring an action on behalf of itself (and others similarly situated) for injury to the proprietary rights of the District by reason of acts in restraint of trade, as can any other person who may be so injured. The District of Columbia has no jurisdiction, or responsibility, however, to initiate any action against practices inimical to competition within the District of Columbia but not directed at the District's own interest. Public enforcement of the antitrust laws for actions taken within the District of Columbia is vested exclusively in the federal antitrust agencies.

The federal agencies--the Antitrust Division of the Department of Justice and the Federal Trade Commission--have not had reason, or specific authority, nor have they chosen to single out the District of Columbia for special antitrust enforcement or scrutiny. Both agencies expressed a willingness to examine any complaint concerning restrictive practices in the District. As a matter of planning, however, both agencies, with limited budgets, must necessarily concern themselves first with national problems. For whatever reason, the result has been that few public enforcement actions have been initiated in the District of Columbia. Presently, the only available alternative for D. C. residents who may feel aggrieved by an anticompetitive practice (which does not warrant expenditure of federal resources) is private litigation. Accordingly, based upon an examination of available information, as will be discussed more fully below, the Committees have concluded that the District of Columbia, like the majority of states, should adopt its own provisions against anticompetitive practices in order to make available to the citizens of the District the same local active public enforcement of the antitrust laws as is available to most states, which are, as a result, not totally dependent upon federal authority, as is the District of Columbia.

The Committees wish to extend their sincere thanks to the Antitrust Division and the Federal Trade Commission for their full cooperation. This report should not be considered as a criticism of these agencies. The void which needs to be filled is the absence of any authority by the District of Columbia to assume responsibility for local restraints of trade. Once the District develops its own antitrust capability and experience, the Committees believe that the federal agencies will be in a better position to coordinate and assist the District to detect and eliminate unlawful conduct. The interest of the federal agencies in antitrust violations occurring within the District but involving interstate commerce will not be lessened.

I. The Federal Antitrust Laws

The District of Columbia has no local antitrust statutes of general applicability.[*] However, various provisions of the federal antitrust laws are made expressly applicable to cases arising in the District.

A. Sherman Act

Sections 1[**] and 2[***] of the Sherman Act, by their express terms, do not cover restraints of trade or monopolies

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[*] It is illegal for certain public utilities to purchase or acquire stock in a public utility authorized under any law of the United States to do business in the District of Columbia (D. C. Code 43-502, 503). In addition, Section 29-944 of the D. C. Code provides:

> Nothing in this chapter [Corporations] shall be interpreted to authorize a corporation to do any act in violation of the common law or the statutes relating to the District of Columbia or of the United States with respect to monopolies and illegal restraint of trade.

[**] Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. 15 U.S.C. §1 (Emphasis added).

[***] Section 2. Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. 15 U.S.C. §2 (Emphasis added).

arising within the District of Columbia. Section 3 */ of the Sherman Act is the principal federal antitrust law having local application in the District of Columbia. Section 3 proscribes agreements and conspiracies in restraint of trade. It is based upon and is very similar to Section 1. However, while Section 1 proscribes conspiracies in restraint of trade or commerce "among the several States, or with foreign nations," Section 3 also proscribes conspiracies in restraint of trade or commerce within the District of Columbia. Thus, while interstate commerce has to

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*/ Section 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court. 15 U.S.C. §3 (Emphasis added).

be involved to make out a violation of Section 1, purely local trade or commerce will suffice under Section 3. */

Suits under the monopolization provisions of Section 2 of the Sherman Act, however, can be brought against persons and companies in the District of Columbia only if interstate commerce

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*/ In Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 434-435 (1932), the Court stated:

> Section 1 having been passed under the specific power to regulate commerce, its meaning necessarily must be limited by the scope of that power; and it may be that the words "trade" and "commerce" are there to be regarded as synonymous. On the other hand, § 3, so far as it relates exclusively to the District of Columbia, could not have been passed under the power to regulate interstate or foreign commerce, since that provision of the section deals not with such commerce but with restraint of trade purely local in character. The power exercised, and which gives vitality to the provision, is the plenary power to legislate for the District of Columbia, conferred by Art. I, § 8, cl. 16 of the Constitution. Under that clause, Congress possesses not only every appropriate national power, but, in addition, all the powers of legislation which may be exercised by a state in dealing with its affairs, so long as other provisions of the Constitution are not infringed. (Citation omitted.)

Accord: United States v. National Association of Real Estate Boards, 339 U.S. 485 (1950); American Medical Association v. United States, 317 U.S. 519 (1943).

is involved or if there is an effect on interstate commerce. Section 3 does not extend to monopolizations or attempts to monopolize.

B. Clayton Act

Section 1 of the Clayton Act defines commerce as:

> 'Commerce,' as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: Provided, That nothing in this Act contained shall apply to the Philippine Islands. [October 15, 1914, Chap. 323, Sec. 1, 38, Stat. 730; 15 U.S.C., §12] (Emphasis added).

Thus, any violation of the substantive provisions of the Clayton Act within the District of Columbia will give rise to a cause of action. (It may be noted that the Clayton Act includes the Robinson-Patman Act.)

C. Federal Trade Commission Act

The Federal Trade Commission has specific jurisdiction over the District of Columbia */ for unfair methods of competition, which effectively encompass any violation of the antitrust laws. Sperry & Hutchinson Co. v. Federal Trade Commission, 405 U.S. 233 (1972). The FTC Act, however, does not create any private right of action for consumers, or other entities, and may be enforced only by the Federal Trade Commission. **/

II. Enforcement of the Antitrust Laws in the District of Columbia

As a federal penal statute Section 3 is only enforceable by the United States in federal district court. Section 4 of the Sherman Act also gives the district courts exclusive jurisdiction over civil actions brought by the United States to restrain violations of the Sherman Act. The responsibility for enforcement of the Act is assigned to the Attorney General.

Private parties, including the District of Columbia, have the right to bring treble damage civil actions pursuant to

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*/ Section 4 of the FTC Act defines commerce as follows:

> 'Commerce' means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. 15 U.S.C. § 44 (Emphasis added).

**/ Holloway v. Bristol Myers Corp. 485 F.2d 986 (D.C.Cir. 1973).

Section 4 of the Clayton Act (15 U.S.C. § 15) for any injury to their business or property by reason of anything forbidden in the antitrust laws. This essentially includes actions under the Clayton Act as well as Section 3 of the Sherman Act.

The District can maintain an action under Section 4 for damages to its own commercial or proprietary interests, and it can bring class actions on behalf of itself and its citizens if they are similarly situated. See, In re Ampicillin Antitrust Litigation, 55 F.R.D. 269 (D.D.C); Indiana v. Chas. Pfizer & Co., 68 Civ. 3157 (S.D.N.Y. 1970); City of Philadelphia v. Emhart Corp., 50 F.R.D. 232 (E.D. Pa. 1970). */ At this time, however, it cannot sue for damages as parens patriae. Hawaii v. Standard Oil Co., 405 U.S. 251 (1972); California v. Frito Lay, Inc., 474 F.2d 774 (9th Cir. 1973), cert. denied 412 U.S. 908. The District may also seek injunctive relief to restrain antitrust violations on behalf of itself or of its citizens, as above, under Section 16 of the Clayton Act (15 U.S.C. § 26).

The District of Columbia, however, has no criminal or civil jurisdiction to enforce compliance with either the Sherman or Clayton Acts. See, 15 U.S.C. § 4 and § 25.

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*/ Legislation is pending in Congress, however, which would authorize such actions. See H.R. 2850 and S. 1284.

III. Exclusive Jurisdiction of United States District Courts Over Federal Antitrust Actions

The federal district courts are granted exclusive jurisdiction in respect to suits to enforce antitrust laws. General Investment Co. v. Lake Shore & Michigan Southern Railway Co., 260 U.S. 261 (1922). While the former D.C. Supreme Court had antitrust jurisdiction identical to that of the federal district courts (United States v. California Cooperative Canneries, 279 U.S. 553, 558-59 (1929)), enforcement of the antitrust laws is now confined to actions brought by the United States or private persons in the District Court for the District of Columbia. See, D.C. Code § 11-92.

IV. State Antitrust Laws

Nearly all the states now have adopted consumer protection and/or antitrust legislation. Puerto Rico adopted such legislation many years ago. A Uniform State Antitrust Act was approved by the National Conference of Commissioners on Uniform State Laws in 1973 and approved by the American Bar Association in 1974. Only one state appears to have adopted this statute as of this time (Arizona) (Ariz. Rev. Stat. § 44-146 (et seq.)).

Many states (e.g., New York and Hawaii) have enacted antitrust laws with criminal penalties and broader antitrust prohibitions than the Uniform Act. Some states (e.g., Pennsylvania) have statutes prohibiting sales below cost "with the intent of

unfairly diverting trade from or otherwise injuring a competitor." Other states (e.g., Virginia) have price discrimination provisions similar to Section 2 of the Clayton Act. Only a few states appear to have adopted antimerger legislation along the lines of Section 7 of the Clayton Act (e.g., Alaska).

Puerto Rico, as noted, has a comprehensive antitrust statute (upheld in People of Puerto Rico v. Shell Oil (P.R.) Ltd., 302 U.S. 253 (1937)). It proscribes transactions in restraint of trade, unfair methods of competition, monopolies, certain mergers and acquisitions, exclusive dealings, and price discrimination. Civil and criminal penalties are provided as well as authority for treble damage private suits.

In the general area of unfair trade practices (many including consumer frauds), the vast majority of the states enacted their own legislation. Most of the states have antitrust and consumer protection divisions in the Attorney General's Office, or in some other state-level agency, staffed by lawyers and investigators, to prevent the prohibited practices.

In 14 states, laws utilize broad language similar to the Federal Trade Commission Act and reach all "unfair methods of competition and unfair or deceptive acts or practices" in trade and commerce.

Another 14 states have laws which prevent all forms of deceptive trade practice.

An additional 17 states have laws which prohibit an itemized list of deceptive practices, usually with a "catch-all" clause to reach other practices which are unfair or deceptive to consumers.

A total of 48 states has in recent years enacted laws more or less like the Federal Trade Commission Act to protect their citizens from deceptive and unfair trade practices.

The Federal Trade Commission's recommended state legislation contains additional features, similar to that recently provided the FTC, */ such as provision for restitution, which may be obtained by the administering official on behalf of aggrieved consumers. This provision has been adopted in 40 states.

Civil penalties for an initial violation of such state acts may be assessed in 22 states. Class actions by consumers are authorized in 13 states. Private actions by consumers, sometimes including minimum recovery of $100 or $200, and usually including costs and attorney fees, are authorized in 38 states. Authority for issuance of rules and regulations to implement deceptive and unfair trade practice laws is contained in the statutes of 27 states. Enforcement responsibility is

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*/ See, The Magnuson-Moss Warranty-FTC Improvement Act, P.L. 93-637, January 4, 1975.

commonly allocated between state and local agencies, with a strong coordinative role vested in an agency at the state level.

Finally, it should be noted that state activity in this area, as evidenced above, is not stagnant; even as this report was being prepared, three more states have acted either to strengthen language in existing state antitrust statutes or to enact an antitrust statute for the first time.*/

This growing state activity is to a large degree the result of the efforts of the federal antitrust agencies, which have, for some period of time, encouraged the states to enact legislation similar in language to the federal statutes, apparently with the recognition that only in this manner can there be strong antitrust enforcement of essentially local unfair practices.

V. District of Columbia Home Rule: Federal Antitrust Preemption?

Prior to the District of Columbia Government and Governmental Reorganization Act, P.L. 93-198; 87 STAT. 774 (hereinafter referred to as the Reorganization Act), the District had no legislative power. Accordingly, no legislation was enacted by the District along the lines of the state statutes discussed in the previous section, nor had Congress passed any such legislation,

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*/ Nevada Laws, 1975 ("Unfair Trade Practice Act"), approved May 18, 1975, effective July 1, 1975; Alaska Laws, 1975, Chapter 53, §§45.52 010 through 45.52 300, approved May 7, 1975, effective August 5, 1975; Hawaii Laws, 1975, Statutes §§ 480-15.1 through 480-16.

other than Section 3 of the Sherman Act, which may be construed as on behalf of the District. Since the enactment of the Reorganization Act, the question has been raised as to the District's authority to enact its own antitrust legislation, and particularly as to whether there is a Federal Government preemption in this area.

Specifically, the issue is whether the Reorganization Act will allow the City Council for the District of Columbia to supplement the existing federal statutes, to the extent that they are applicable, by enacting its own "little" Sherman Act and/or FTC Act.

A. The Reorganization Act

Following are summaries of pertinent sections of the Reorganization Act.

1. General

(a) Sec. 302 - Except as provided in sections 601, 602 and 603, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this Act subject to all the restrictions and limitations imposed upon the states by the tenth section of the First Article of the Constitution of the United States.

(b) Sec. 404(a) - Subject to the limitations specified in Title VI of this Act, the legislative power granted to the District by this Act is vested in and shall be exercised by the Council in accordance with this Act.

2. Part C - The Judiciary

(a) Sec. 431(a) - The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a U.S. court has exclusive jurisdiction pursuant to an Act of Congress. The District of Columbia courts shall also have jurisdiction over any matters granted to the District of Columbia courts by other provisions of the law.

3. Title VI - Reservation of Congressional Authority

The District of Columbia may not:

(a) Sec. 602(a)(3) - Enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District.

(b) Sec. 602(a)(4) - Enact any act, resolution, or rule with respect to any provision of Title 11 of the District of Columbia Code (relating to organization and jurisdiction of the District of Columbia courts).

Based upon our analysis of the statute and relevant decisions by the courts, we have concluded that antitrust

legislation may properly be a "rightful subject of legislation" by the District of Columbia Council.

B. Federal Antitrust Laws Do Not Occupy the Field

By analogy, reference can be made to state efforts in the antitrust field. Not only have many states passed antitrust statutes, but the statutes have been held valid and enforceable under both state and federal constitutions, see infra.

Generally, state laws are applicable to intrastate commerce while federal antitrust legislation is concerned only with interstate commerce.

Puerto Rico, however, has enacted an antitrust statute covering the same trade practices as the federal statutes, which presents a situation much closer on point. In a suit questioning the validity of the Puerto Rican statute, the court emphasized that the acts of Congress and acts of a territorial legislature relating to a matter of local government, such as restraint of trade within the territory, can coexist. Furthermore, any conflicts which arise can be resolved by the federal courts. People of Puerto Rico, supra.

As noted, Sec. 602(a)(3) of the Reorganization Act prohibits the City Council from enacting any act which amends or repeals an act of Congress concerning property of the United States or which is not restricted in its application exclusively in or to the District. A threshold question, therefore, is whether Section 3 of the Sherman Act has application exclusively

in the District and cannot be amended (albeit indirectly) by the City Council through enactment of its own antitrust legislation. If so, then Section 3 must be amended or repealed only by the Congress.

We have concluded that the District of Columbia may enact antitrust legislation without an Act of Congress for the following reasons: First, neither Section 3 of the Sherman Act nor the Clayton Act deals exclusively with the District but each also deals with territories. Second, the Council would not enact any provision which would amend or repeal either of those applicable statutes.

As indicated, states may enact, and have enacted, valid and enforceable antitrust legislation having applicability to intrastate commerce.

When a state statute affects interstate commerce, the inquiry is whether there is a significant impact upon local trade. If so, the law is valid and enforceable. See, Standard Oil of Kentucky v. Tennessee ex. rel. Cates, 217 U.S. 413 (1910); cf., Baker v. Walter Reade Theatres, Inc., 237 N.Y.S. 2d 795 (N.Y. Sup.Ct. 1962), 1962 Trade Cas. ¶70,525; Leader Theatre Corp. v. Randforce Amusement Corp., 58 N.Y.S. 2d 304 (N.Y.Sup. Ct. 1945), 1944-1945 Trade Cas. ¶57,418; W.J. Seufert Land Co. v. Nat. Restaurant Supply Co., 1973, Ore. Sup. Ct., 1973 Trade Cas. ¶74,643.

Further, federal action taken pursuant to federal law in the antitrust field does not bar a state from maintaining its own civil action under state law against the same defendants for the same alleged unlawful practice. State of Texas v. Southeast Chapter of Nat. Electrical Contractors Assn., 358 S.W. 2d 711 (Tex. Ct. Civ. App. 1962), 1962 Trade Cas. ¶70,479; State of Wisconsin v. Allied Chemical and Dye Corp., 101 N.W. 2d 133 (Wis. Sup. Ct. 1959), 1960 Trade Cas. ¶69,608; R.E. Spriggs Co. v. Adolph Coors Co., 1974, Cal.Ct. App., 1974 Trade Cas. ¶74,999.

The fact that Congress has legislated in the antitrust field and, more specifically, has legislated with respect to the District of Columbia, in the Committees' opinion, does not necessarily give rise to the doctrine of federal preeemption.

In State of Wisconsin, supra, the court concluded that the federal statute does not preempt the state from enforcing its own antitrust legislation since there is no clear language in the federal statute indicating preeemption was intended by Congress. Similarly, in Adoph Coors Co., supra, the court found no intent on the part of Congress to preeempt parallel state efforts to control unfair trade practices. In addition, the fact that the Federal Government had specifically legislated for a territory had no effect on the territory's authority to enact its own legislation. See, People of Puerto Rico, supra.

In sum, absent irreconcilable conflict with interstate trade and commerce, there is no per se federal preeemption in the antitrust field. The test for validity is the impact upon interstate commerce. Waters-Pierce Oil Co. v. State of Texas, 212 U.S. 86 (1909).

Through the authority vested in the City Council by the Reorganization Act, we conclude that it now is possible for the District to enact its own antitrust legislation.

Finally, it should be noted in this regard that the District of Columbia City Council may not invest the Superior Court with jurisdiction over private civil or criminal suits arising under the Sherman or Clayton Acts which grant exclusive jurisdiction of such suits to the United States District Court. */

However, the City Council may grant jurisdiction to the Superior Court for suits arising under its own antitrust statute. Sec. 431 invests the Superior Court with jurisdiction over all civil and criminal matters arising in the District. There is no upper jurisdictional amount limitation.

VI. The District of Columbia Has Not Received Special Federal Antitrust Oversight

None of the agencies responsible for enforcing the antitrust

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*/ Sec. 431, Reorganization Act, deprives the Superior Court of the District of Columbia from asserting jurisdiction over matters exclusively granted to a United States Court by an Act of Congress.

laws has specific law enforcement programs with respect to the District of Columbia, although each of the representatives contacted by the Committee, including the Antitrust Division, the U.S. Attorney's Office and the Bureau of Competition and the Washington Regional Office of the FTC, cooperated fully with the Committees and expressed an interest in expanding each respective agency's or office's activity in the District should a matter be brought to its attention.

A. Federal Trade Commission

The Commission rules provide that applications for complaint must be in writing and signed, but no other special formality is required. See FTC Rules of Procedure Section 2.2. Each letter is reviewed by an attorney in the headquarters or regional office where it is received, and usually it is given a direct reply. A determination as to whether a matter may warrant full evaluation in terms of FTC resources is made by an antitrust evaluation committee comprised of officials of the Bureaus of Competition and Economics.

Typically, when a person complains about anticompetitive conduct occurring on a local level (and where the complaint is sent to the headquarters office of the FTC), the complaint is referred to the appropriate regional office, which in turn determines whether any Commission activity is warranted. Historically, according to

Bureau of Competition spokesmen, the FTC regional offices have not been involved actively in antitrust matters. The D.C. Bar Committees were advised that the Commission is presently seeking to strengthen its regional office antitrust capabilities, although the Committees understand that no investigation can be initiated by a regional office involving an alleged antitrust violation without the prior approval of the Bureau of Competition. The Commission's regional office, if it considers a matter insignificant for its own program purposes, has the option of channeling a complaint to a local agency, if one exists, which in turn can handle the matter on a localized level. The Bureau of Competition reports, however, that as a practical matter this is not regularly done, either because of the lack of an interested local agency, or because no liaison procedure is formally in operation.*/

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*/ The FTC Washington Regional Office does have a liaison procedure with the District of Columbia, although this primarily concerns consumer protection activities, since the District has no agency responsible specifically for antitrust matters. See infra. The Commission's staff stated, however, that it anticipates an increased opportunity for inter-governmental cooperation resulting from the expanded level of self-government recently attained by the District of Columbia.

Statutes administered by the Commission generally apply to violations involving "interstate commerce," as that term is defined in each individual law.*/ Generally speaking, each statute encompasses all commerce in the District of Columbia together with most of the other interstate commerce subject to Congressional authority. Commission representatives felt, however, that there is no legal basis for the Commission to treat the District of Columbia differently than any other area of the country in its enforcement program, even though this is the only area in the country in which the Commission has jurisdiction over purely local matters. The Bureau of Competition has no separate budgetary funds for the District of Columbia. Accordingly, there is no different procedure or consideration given to complaints of alleged violations arising in the District. For the same reasons, there is no program which has as its sole or primary purpose uncovering potential antitrust law violations in the District.

Occasionally the Commission does concentrate attention upon a problem in a way which may have special local impact. In the late 1960s, for example, a study of retail food prices in the District of Columbia and San Francisco compared prices in

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*/ The Magnuson-Moss Warranty-FTC Improvement Act expanded the FTC's jurisdiction to matters in or affecting commerce.

stores of the same chains located in the inner city and the suburbs and overall food costs in those two areas. A staff report entitled "Do the Poor Pay More?" was published by the Commission. Numerous investigations have been conducted concerning firms based in the Washington area which were alleged to be involved in law violations, such as the acquisition of Embassy Dairy and alleged price fixing among local industrial linen supply firms. However, on the whole, there has not been much activity centering on local practices.

1. The Bureau of Competition

The Bureau of Competition maintains ongoing liaison with the Antitrust Division of the Department of Justice for coordination of activities and avoidance of duplication in their respective overlapping jurisdictions under Sections 2, 3, 7 and 8 of the Clayton Act, and in their respective jurisdictions under Section 5 of the Federal Trade Commission Act and under the Sherman Act. The Washington Regional Office also has liaison with representatives of the District of Columbia government and with neighboring state and local governments, primarily concerning consumer protection activities (see subsection 2, infra). There is, however, no established liaison procedure with the District of Columbia regarding antitrust matters. Essentially, according to the Bureau of Competition, this is because there is no office or agency in the District with specific responsibilities for enforcement of antitrust policy.

The only major ongoing program of interagency cooperation in the antitrust area relates to coordination between the Bureau of Competition and the attorneys general of various states in connection with the oil cases.*/ The Director of the Bureau of Competition is the liaison officer for the Commission. Again, this program is limited to the petroleum field and was begun as a result of the interest on the part of the states in the ramification of the Commission's oil company litigation.

With the above exceptions there is not now, nor has there ever been, any actual program for information pass-through or other coordination efforts in the antitrust field, nor is any such program under active consideration by the staff of the FTC. This, essentially, is the result of the fact that not all states have agencies concerned with antitrust enforcement; and in other states the appropriate agencies reportedly either have little interest in pursuing antitrust matters or lack the manpower

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*/ The Federal Trade Commission has a formal liaison program under the title of Federal-State Cooperation. The Federal-State Cooperation program is administered by the Bureau of Consumer Protection and is principally designed to encourage states to enact "little FTC Acts." This program also acts as liaison with the National Association of Attorney Generals. Thus far there has been no effort to expand this program into the antitrust area. In the area of deceptive practices there is an active program with regard to passing information between the FTC and the state and local agencies.

to do so.*/ The Bureau of Competition reported the state agencies generally have been interested only in issues of an explosive nature, such as in the petroleum case. For this reason, the Commission has not sought to institutionalize or expand a liaison procedure with the states regarding antitrust matters.

2. The Washington Regional Office

While there is no specific authority within the District of Columbia as to who has authority in respect to alleged violations of the antitrust laws, during the past 4-1/2 years the Washington Regional Office has worked through the Washington Metropolitan Consumer Protection Task Force which meets monthly and has been attended by representatives of the D. C. Office of Consumer Affairs and the U. S. Attorney's Office. Although this Task Force is primarily concerned with consumer protection matters, it also is capable of serving as a vehicle for antitrust complaints.

The Washington Regional Office expressed strong interest in pursuing antitrust cases within the District; however, complaints arising in the District cannot be handled, under Commission procedures, any differently from complaints arising anywhere

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*/ Two of the states we checked with, however, claim that representatives from the Attorney General's Office expressed a desire for more extensive coordination.

else in the territory under its responsibility, which includes Maryland, Virginia, West Virginia and Pennsylvania. The Washington Regional Office also has organized a team of five attorneys to develop antitrust investigations within its territory. At the moment this team is concentrating its efforts in one (unidentified) state. The Office advised that it also has future plans for concentrating the efforts of this team in the District.

The Commission has not budgeted specific funds for the Washington Regional Office for the investigation or prosecution of complaints arising in the District. Budget allocations for the Washington Office are designated according to specific programs, not according to particular political subdivisions within the Office's territory. The Commission has not made any special effort to apply Section 5 of the FTC Act to complaints of unfair methods of competition or violations of the Clayton Act arising in the District during the past ten years. The Commission also has not promulgated any particular guidelines relating to the District of Columbia or strictly local antitrust violations.

The Committees sought statistical data from the FTC (both from the Bureau of Competition and the Washington Regional Office) concerning antitrust matters arising in the District of Columbia. It was determined that the Commission does not keep records in a fashion that would permit an accurate statistical

response to this inquiry. Most of the FTC's programs are designed to deal with problems on the basis of the type of violation or the industry affected. Generally the headquarters operation concentrates on matters of national scope, and even the regional offices normally do not focus on particular, city-defined geographic areas. As a result, not only are the statistical records of the Commission not readily accessible on the basis of geographic area, but there is no way to determine the amount of antitrust resources expended for the economic benefit of a particular community.

The Washington Regional Office, however, was able to provide some statistics on matters arising within the District.

During the period from 1971 to March 1975, the Washington Office has conducted eight preliminary investigations of an antitrust nature, of which four were initiated as a result of complaints received from District of Columbia applicants. During the past ten years the Washington Regional Office conducted 13 formal antitrust investigations in the District of Columbia. The practices complained of included alleged unlawful price discriminations, unlawful tying arrangements, price fixing and restrictive leasing agreements. As of this time, none of these matters has resulted in adjudication, although consent settlements were obtained in a number of instances.

B. Antitrust Division

Like the Federal Trade Commission, the Antitrust Division does not maintain records which would permit a statistical breakdown of complaints or investigations in a local metropolitan area, including the District of Columbia.

However, officials responding to the Committees' inquiry indicated that, in their experience with the Antitrust Division, there had been very few complaints connected primarily or exclusively with the District of Columbia. This was attributed to several factors: First, the District of Columbia and surrounding jurisdictions are predominantly residential, and service-oriented, rather than industrial areas, and thus industrial pricing violations do not often occur in the area. Second, there are a substantial number of discount houses in the area which, by their presence, tend to frustrate any attempt at retail price fixing. Third, since Washington is the seat of the FTC and the Antitrust Division, the local papers give high visibility to antitrust enforcement and this publicity tends to deter violations.

Primarily as a consequence of the above facts, the Division has not conducted many investigations in the District of Columbia over the last few years. The Division does compare Washington retail and wholesale prices to those in other cities as part of its ongoing price monitoring program, but according to the Antitrust Division, District of Columbia prices

generally compare favorably with those in other cities. The Division also includes the District in its regular general investigations of industries where pricing violations are thought to occur with some regularity. The Division has not found any violations in the District as a result of these programs, and consequently it has not singled out the District for special attention.

As is the case with the Federal Trade Commission, there is no special procedure for handling complaints arising in the District. No funds are budgeted specifically for enforcement of the antitrust laws in the District. In general, complaints about possible antitrust violations are referred: (1) to a field office of the Antitrust Division if the complaint relates to a specific region, or (2) if the violation appears to be complex, or to have a national impact, to an attorney at Division headquarters. While the Division's Philadelphia Field Office has jurisdiction over the District of Columbia, violations occurring in the District generally would be handled by headquarters.

The Division has sought to encourage antitrust enforcement by U. S. Attorneys and local agencies and has made a special effort to try to find a violation relating to the District for investigation and prosecution by the local United States Attorney but has been unable to come up with a complaint. Division

officials noted that the local U. S. Attorney has an excellent Fraud Unit which would be certainly able to prosecute most antitrust violations.

C. United States Attorney's Office

At least in the past ten years no cases have been brought by the U. S. Attorney for the District of Columbia involving antitrust laws.

As a general proposition, all antitrust cases would be referred to the Department of Justice Antitrust Division. There are no lawyers in the U.S. Attorney's Office with prior antitrust experience. The Office has never sought antitrust cases, and there is no knowledge of such cases having been referred to the District Office during the past ten years. Attorneys in the Office indicated, however, that should such a case be referred to that Office they would certainly undertake to prosecute it.

In late 1974 the Antitrust Division of the Department of Justice conducted a series of meetings with the U.S. Attorney's Offices in various cities in the country including the District of Columbia. During these meetings the Antitrust Division indicated an interest in having the U. S. Attorney's Offices handle smaller or regional price-fixing cases. The U. S. Attorney's Office for the District of Columbia indicated a

strong desire to participate in a program, but the Office had received no referrals from the Department of Justice and nothing has taken place with regard to this proposed program as of the date of this report.

At present there is no formal effort on the part of the U. S. Attorney's Office to seek out antitrust violations. No complaints have been brought to the Office involving antitrust matters.

There is a liaison procedure between the U.S. Attorney's Office and the Corporation Counsel for the District of Columbia, but this liaison procedure relates to consumer fraud and environmental issues and is totally unrelated to antitrust violations.

D. District of Columbia Corporation Counsel

The Corporation Counsel presently has no jurisdiction or responsibility in connection with the general enforcement of any antitrust law in the District of Columbia. Any antitrust complaint, of which there have been few in number, generally would be referred to the U. S. Attorney. There is no specific coordination between the Corporation Counsel and either the U. S. Attorney or the federal antitrust agencies. Attorneys in the Corporation Counsel's Office expressed some interest in the

District of Columbia Council enacting a single unitary "consumer" protection act, specifically including antitrust matters, and vesting and assigning primary responsibility to the Corporation Counsel for the enforcement of such a law.

VII. District of Columbia Antitrust Agency: Is There A Need?

The joint committee project sought to review four questions:

1. Whether existing antitrust laws apply to the District of Columbia;
2. Whether there is a need for such laws;
3. Whether the District of Columbia can enact its own antitrust laws; and
4. If the District of Columbia should enact its own antitrust laws, what form should such laws take.

In this project a distinction has been made between antitrust and consumer protection statutes. Thus, for the purpose of this discussion, we shall define antitrust violations as restraints of trade, such as Sherman Act, Clayton Act and Robinson-Patman Act violations. Consumer protection violations shall refer to unfair and deceptive practices directly affecting consumers, constituting Section 5, FTC Act violations, as supported by modern consumer legislation, including the various

statutes dealing with lending and credit, packaging and labeling, product safety, consumer product warranties, etc.

It is fairly clear that the Sherman Act (except for provisions relating to monopoly and attempts to monopolize), the Clayton Act and the Federal Trade Commission Act cover practices which occur either in commerce between the District of Columbia and other states or exclusively within the District of Columbia. It also appears clear that under the new District of Columbia Government and Governmental Reorganization Act, the District could adopt an antitrust statute of its own as has been done by the states, and at least one territory.

The threshold question is whether, absent an in-depth factual investigation to determine the actual existence of specific anticompetitive practices, there is a basis to conclude that there is presently a need for enactment of antitrust legislation by the District of Columbia.

Although representatives from the Department of Justice and the Federal Trade Commission reflect the awareness of their responsibility for the enforcement of the antitrust laws in the District, it can be determined that there have been few public proceedings. At the same time, the study failed to uncover any significant number of private treble damage suits filed for antitrust violations occurring within the District (although the experience of some of the Committee members who

practice law in the District indicates a growing interest in private litigation in the District). In contrast, an analysis of FTC action points to a continuing series of consumer protection type suits filed against local merchants.

The Committees recognize that for a number of reasons (including the impropriety of the Bar Association seeking to investigate and report on practices of particular business concerns) they are not in a position to embark on such an in-depth investigation to accumulate empirical data on the extent of anti-competitive conduct (or industry structure) within the District. Nevertheless, it is the conclusion of this study that the absence of significant federal antitrust enforcement is not the end of the inquiry, regardless of whether the fact of few antitrust proceedings is construed either as a demonstration for or against enactment of antitrust legislation by the District of Columbia. */

Historically the most significant antitrust enforcement has been precipitated by the enforcement agencies, and not by competitors or consumers. Few would dispute that the federal antitrust agencies have substantial demands upon their resources, and generally must justify resource allocation with an analysis

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*/ It is the position of a few of the members of these Committees that absent such empirical demonstration that there are specific local matters meriting antitrust enforcement action and that such matters are ignored by the Antitrust Division or the FTC, the Bar Association should not recommend enactment of a D.C. antitrust law.

of the economic benefit that their actions will provide to the greatest number of consumers.*/ The experience of many members of the Committee suggests that as federal agencies expand reliance upon sophisticated policy planning criteria, it is increasingly unlikely that local restraints in the District of Columbia generally would qualify for federal resource commitments.

When viewed from a federal perspective, there also is a question whether, given present federal antitrust resources, the Federal Trade Commission and the Antitrust Division should be employing their resources to bring suits that are entirely local in nature as compared to other possible actions which those agencies could be taking. Yet, while the federal agencies must apportion their resources among matters affecting trade throughout the United States, the District of Columbia residents, unlike residents in other jurisdictions, cannot resort to a state or local enforcement machinery when the federal agencies decline to, or are not in a position to, take action. Under the present scheme of federal antitrust oversight, the District of Columbia Government has no responsibility or authority to enforce compliance with the antitrust laws. This not only deprives the District

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*/ Both the FTC and the Antitrust Division now are beginning to employ computer programing to assist them in making planning decisions

of Columbia of any "in-house" antitrust expertise but deprives local residents of an opportunity to seek redress from their local government on matters which may not warrant federal resources but are of direct concern to the community.

Conclusions and Recommendations

The joint study by the Committee on Antitrust and Trade Regulation and the Committee on Antitrust and Trade Regulation Agency Oversight sought to determine whether it should be recommended that the District of Columbia City Council enact legislation containing provisions similar to the federal antitrust laws with respect to trade and commerce within the District. The conclusion is that it should.*/

Our conclusion that legislation is necessary and desirable is based in part upon the following considerations.

First, such antitrust enforcement as presently exists in the District of Columbia is passive in nature. Of all agencies queried, none, with the possible exception of the FTC Washington Regional Office, sua sponte initiates investigations relating to competitive practices within the District. The Committee would not equate a lack of known complaints to the absence of violations

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*/ We recommend specifically and emphatically, however, that investigatory and enforcement authority under any statute to be adopted be vested in a designated official. Without this designation potential complaints may be lost and no one person will have an incentive or directive to guard against antitrust violations in the District.

of a local character. Also, it is impossible, as a practical matter, to devise any study which would demonstrate the absence of significant anticompetitive practices ordinarily reachable by the antitrust laws.

Second, those states which have enacted antitrust statutes have had a substantial degree of activity attributable to their antitrust programs. Many state Attorney Generals' Offices maintain several antitrust actions simultaneously, and also in conjunction with each other.

Third, the District is a heavily populated metropolitan area in which commercial activity, if not manufacturing activity, plays a significant role. Service industries abound and a large tourist industry supplies commercial income partially off-setting a lack of heavy manufacturing. Retailing and consumer oriented commerce would appear at least as important to the District as to other metropolitan areas.

Fourth, the District should not, simply because of its unique relationship with and proximity to the federal antitrust agencies, fail to assume responsibility for local restraints of trade that most states consider necessary and justifiable.

Finally, absent such local responsibility, the vast majority of matters which might be subject to typical antitrust investigation would not be economically significant when measured by federal agency standards. This consideration, however, does

not support the conclusion, in the Committees' opinion, that the impact of a local restraint upon trade, individually or cumulatively, would not warrant the presence and action of a local antitrust enforcement agency. The FTC's staff already has noted the difficulty of coordinating with the District of Columbia which has no individual or agency responsible for antitrust matters. Further, there may be other benefits to the District in developing its own expertise in the antitrust field--such as comments on proposed legislation.

The District of Columbia, in considering such legislation, will be able to draw upon the experience of the numerous states which have enacted "little" antitrust laws, and any particular variations therein. In addition, it may consider the Uniform Act */ and the Puerto Rico statute which was expressly approved by the Supreme Court as not inconsistent with the federal laws.

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*/ The Act contains a number of possible limitations, however:

1. The statute prohibits monopolies only if the purpose of such a monopoly is to exclude competition or control, fix or maintain prices (Section 3).

2. The Attorney General may initiate a demand for information or for a person to appear to testify only upon "reasonable cause" (Section 6).

3. The statute contains no criminal penalties. The state is limited to injunctive relief and "civil penalties" of up to $50,000 (Section 7).

4. The state, like other private parties, can seek damages for injuries to its commercial interests. Treble damages, however, are limited to suits by private persons and can only be awarded if the trier of fact finds that the violation is "flagrant" (Section 8(b)).

[Footnote continued on following page.]

Accordingly, it is the recommendation of the Committee on Antitrust and Trade Regulation and the Committee on Antitrust and Trade Regulation Agency Oversight that the District of Columbia City Council should conduct hearings for the purpose of drafting and enacting antitrust legislation appropriate for the District of Columbia. The Committees are prepared to assist the City Council in drafting such legislation.

Drafting Committee

Michael E. Friedlander
Timothy J. Waters

Research Committee

Michael M. Eaton
Steven J. Fellman
Michael E. Friedlander
Richard deC. Hinds
J. T. Martin
Andrew G. Stone
Timothy J. Waters
Lee I. Weintraub

Steering Committee
Division on Antitrust, Trade
Regulation and Consumer Affairs

Jerome A. Hochberg, Chairperson
Samuel K. Abrams
Joan Claybrook
Michele Corash
Mark Green
Peter Schuck

[Footnote continued from preceding page.]

5. There is no specific antimerger provision.

6. There is no specific price discrimination or exclusive dealing provision.

Fred Aranha, Director, Support Services

Sandy Brown, Executive Assistant, Councilman Julius Hobson

August 13,1975

Dictating Machine Equipment and Other Office Supplies and Equipment

We have been using the Norelco dictating machines (portables) and the transcriber on loan as arranged by you. We have found this equipment to be most satisfactory and would like the instruments purchased for the use of Mr. Hobson and the staff of the Education, Recreation and Youth Affairs Committee. We have two portable dictating machines and one transcriber. We would also like to have the telephone adapter.

We also need the following equipment:

1. Small magazine table. (Requested previously)

2. Two additional lateral file drawers to be added to the two currently being used.

3. A four shelf bookcase.

4. If funds would permit, Lorraine would like one of the two drawer file cabinets (similar to the little one in Alan Grip's office to extend her desk, because with the dictating equipment on the typing section of her desk she does not have enough room.

Thank you for your efficient responses to our requests for service.

WASHINGTON CHAPTER

MS. LINDA TEIXEIRA, CHAIRPERSON

ALLIANCE OF DISPLACED HOMEMAKERS

3003 VAN NESS STREET, NW, #205 • WASHINGTON, D.C. 20008 • (202) 362-9224

August 15, 1975

The Hon. Julius Hobson
Member of the D.C. City Council
District Building
Washington, D.C.

Dear Councilman Hobson,

Enclosed is a copy of a Bill which seems assured of passage by the California legislature--only the location of the projected model center still is at issue. The Bill was introduced only a few months ago by Tish Sommers, National Coordinator of the NOW Task Force of Older Women, who also originated the "Equal Opportunities for Displaced Homemakers Bill" recently introduced in Congress by Representative Yvonne Braithwaite Burke.

These Bills respond to the needs for training of women who have spent their lives in homemaking, who find themselves unemployed because of divorce, widowhood, or their children passing the age of eligibility for Aid to Dependent Children, and who are unable to make it in the job market because of lack of training and agist discrimination. The multi-purpose centers established under the Bills would identify jobs in the community which these womens' nurturing skills ideally could fill to satisfy needs for home health care delivery, chore services for the elderly and handicapped, consumer information, financial counseling, and other unmet needs.

We believe the District of Columbia would be well-served by establishing a model center as proposed in this Bill, which would provide a solution for the serious pbolems here in serving community needs, as well as offering skilled employment to our many female heads of household. Please feel free to call upon us if we can provide additional information.

Sincerely yours,

Sara Deane Finch

Sara Deane Finch Virginia Johnson

Virginia Johnson

For the Alliance for Displaced Homemakers

American Civil Liberties Union Fund

Of The National Capital Area

memo from Ralph J. Temple

SUITE 437 3000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D. C. 20008 TELEPHONE 483-3830

American Civil Liberties Union Fund
Of The National Capital Area

SUITE 437 3000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D. C. 20008 TELEPHONE 483-3830

A L C

September 18, 1975

District of Columbia Commission
on Judicial Disabilities & Tenure
717 Madison Pl., N.W.
Washington, D.C. 20005

Re: Proceedings on Judge Charles Halleck.

Gentlemen:

This is to express to you the grave concerns of the American Civil Liberties Union with the proceedings now underway to evaluate Judge Halleck, pursuant to the Commission's statutory authority.

A law that provides for the evaluation of the performance of judges for reappointment runs serious risks of encroaching upon the independence of the judiciary. An independent judiciary, of course, is essential to the administration of justice, because if a judge is not totally free of government pressures -- and of public sentiment -- it is unlikely that the judge will consistently feel free to protect the constitutional and other rights of persons appearing in court. The underlying philosophy of Article III of the United States Constitution, which confers life time appointments on federal judges, is to ensure judicial independence by avoiding the possibility of removal from judicial office except by the drastic and therefore rarely invoked means of impeachment.

The risks of encroachment upon judicial independence make urgent that any attempt to evaluate judges for reappointment proceed only with the utmost caution and subject to the most stringent safeguards to ensure against inappropriate standards or procedures in the evaluation process.

The present proceeding involving the evaluation of Judge Halleck, however, has taken place with no such caution. The apprehensions to which a system of judicial evaluation may give rise have been brought to alarming reality in the present proceeding.

First, the Commission is operating without any meaningful substantive standards to evaluate the performance of Judge Halleck. The vague provisions of the Canons of Judicial Ethics, and the even vaguer standards by which the Commission is empowered to remove judges for misconduct, are inadequate either as a guide to judges or as a basis of limiting the Commission's exercise of its powers. No task as delicate as the evaluation of a judge's performance to determine whether he should be reappointed should be undertaken without a far clearer and more specific elaboration of what is legitimate matter for support or for condemnation.

Second, the Commission is carrying out this sensitive task with no procedural safeguards. There are no provisions for deciding what is relevant and material and what is not, no requirement that the Judge be given adequate notice of matters to be considered and a full opportunity to respond, and indeed no requirement that the Judge even be informed of all matters that may be considered. This, indeed, is an appalling proceeding for anyone to contemplate.

Third, it appears that the United States Attorney's office for the District of Columbia, as an institution, engaged in a systematic search for what it viewed as materials derogatory of Judge Halleck's performance. We believe that this is improper, for it pitches the power, resources, and influence of the Government against a judge who has had to sit daily in judgment of the Government. As a daily litigant before all the judges, the United States Attorney's office is in far too powerful a position to be able to engage in such actions without threatening the independence of all the judges.

The net effect of the three deficiencies we have identified is to bring to fruition the fears that a judicial evaluation commission will encroach on judicial independence, and thus subvert the power of judges to enforce and protect the rights of persons appearing before them. How can any judge now sitting fail to see that when his or her term expires in one, two, five, or ten years, the United States Attorney's office will be there with all the material it can muster to oppose disfavored judges? And how secure can any judge -- or the public -- feel in considering the closed hearings and proceedings of a Commission operating without guiding -- and limiting -- substantive standards and procedural protections?

The ACLU, as a matter of long standing organizational policy, does not support or oppose candidates for office and therefore takes no position on the merits of Judge Halleck's reappointment. However, we believe that the evaluation proceedings of the Commission are, at this point, hopelessly tainted, and we believe that a negative or equivocal rating of Judge Halleck will necessarily have a significant adverse effect on the independence of local trial judges.

Accordingly, we urge the Commission to end its present proceeding. The Commission should recognize that, despite the statutory deadline for evaluation of Judge Halleck, it cannot meet that deadline and adhere to its responsibilities under the Constitution. We believe the Commission has the power to deviate from the statutory deadline for the purpose of developing substantive standards and procedural safeguards as rapidly as possible. An effort should also be made to negate, if possible, the prejudicial actions undertaken by the United States Attorney's office. The evaluation of Judge Halleck should be postponed until these essential steps are taken.

Certainly, the Commission would not lightly fail to meet its statutory deadline. But the consequences of proceeding at this time without the protective measures we have urged will produce a tainted evaluation, undermine the independence of all other sitting Superior Court judges, and discredit the operation of the Commission.

Very truly yours,

Eugene J. Lipman by (hf)

Eugene J. Lipman
President

ACLU

Mail Routing Slip

Date: _____

To: Councilmember Julius Hobson

Comments: _____

) _____

Pat Miner: _____

Lou Aronica: _____

Sandy Brown: _____

Julius won this award once. Ask him for a check for $20 to reserve a place for 2. Someone else can go at the last minute if we can't! Ina

Lorraine McCottry

ACLU

HENRY W. EDGERTON ANNUAL DINNER

ACLU ANNUAL DINNER

Thursday, November 20, 1975

The Sheraton-Park Hotel

The Cotillion Room

Washington, D. C.

7:30 p.m.

Presentation of the

Henry W. Edgerton Civil Liberties Award

to

Florence B. Isbell

Introduction by Roger Baldwin

Remarks by Congressman Don Edwards

HONORARY DINNER COMMITTEE

Hon. Bella Abzug
Mr. and Mrs. Howard Adler, Jr.
Mr. and Mrs. William H. Allen
Mr. and Mrs. Timothy Atkeson
Mr. and Mrs. Alan Barth
Lawrence Baskir
Tersh Boasberg
Wiley A. Branton
Mr. and Mrs. Allison W. Brown, Jr.
Miriam and David Carliner
Dr. James A. Cheek
Hon. David A. Clarke
Manuel F. Cohen
Hon. Arrington Dixon
Mr. and Mrs. John Douglas
Charles T. Duncan
James W. Dyke, Jr.
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Arvonne Fraser
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Dr. and Mrs. Gene Gordon
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Nancy B. Harrison
Hon. Philip A. Hart
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Hon. Julius W. Hobson, Sr.
Mr. and Mrs. Wayne Horvitz
Hon. Hubert H. Humphrey
Mrs. Paul Ignatius
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Robert and Annette Klayman
Hon. Tedson J. Meyers
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E. Barrett Prettyman, Jr.
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Daniel A. Rezneck
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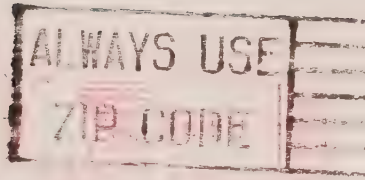
Patricia M. Wald
Robert L. Wald
Rt. Rev. and Mrs. John T. Walker
Hon. Harrison A. Williams, Jr.

ACLU



The Honorable Julius W. Hobson, Sr.
Council of the District of Columbia
Washington, D.C. 20004

2660 Woodley Road

Nov. 20

American Civil Liberties Union Fund
Of The National Capital Area

SUITE 437 3000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D. C. 20008 TELEPHONE 483-3830

Zicht → Woodley over Bridge

September 19, 1975

Julian

Dear ~~Friend~~:

Each year, ACLU members and friends gather to honor the recipient of the annual Judge Henry W. Edgerton Award for distinguished service in the cause of civil liberties.

This year the award will be given to Florence B. Isbell, who started her thirty-year career in ACLU as secretary to Roger Baldwin and was director of the National Capital Area Civil Liberties Union from 1969 until May, 1975. Those of you who know Florence are undoubtedly aware of her unusual dedication, enthusiasm and stamina -- qualities that led her to give more to this organization than we can ever hope to repay.

Because of your past support, we are asking you in advance to reserve the evening of November 20, 1975, for the annual Edgerton Award Dinner at the Sheraton-Park Hotel.

We hope that you will again be a sponsor. A reservation form, together with a return envelope, are enclosed for your response. May we hear from you promptly -- within ten days if possible -- so that we can meet our printing deadline for the dinner invitation?

Since this is our only fund raising activity in 1975, and since your help is very much needed, particularly this year, may we count on you?

With best regards,

Jennie Ross

Jennie Ross
Vice-Chairperson

Anita Gordon

Anita Gordon
Finance Chairperson

483-3830

(638-6263 Mrs. Rubin)

2660 Woodley Road

Nov. 20

American Civil Liberties Union Fund
Of The National Capital Area

SUITE 437 3000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D. C. 20008 TELEPHONE 483-3830

Zuchet → Woodley over Bridge

September 19, 1975

Julius

Dear Friend:

Each year, ACLU members and friends gather to honor the recipient of the annual Judge Henry W. Edgerton Award for distinguished service in the cause of civil liberties.

This year the award will be given to Florence B. Isbell, who started her thirty-year career in ACLU as secretary to Roger Baldwin and was director of the National Capital Area Civil Liberties Union from 1969 until May, 1975. Those of you who know Florence are undoubtedly aware of her unusual dedication, enthusiasm and stamina -- qualities that led her to give more to this organization than we can ever hope to repay.

Because of your past support, we are asking you in advance to reserve the evening of November 20, 1975, for the annual Edgerton Award Dinner at the Sheraton-Park Hotel.

We hope that you will again be a sponsor. A reservation form, together with a return envelope, are enclosed for your response. May we hear from you promptly -- within ten days if possible -- so that we can meet our printing deadline for the dinner invitation?

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With best regards,

Jennie Ross
Vice-Chairperson

Anita Gordon
Finance Chairperson

483-3830

(638-6263 Mrs. Reuben)

☐ Yes, I will attend the Edgerton Dinner on November 20, 1975.

☐ I would like to purchase ____ tickets at $35 each.

☐ My check is enclosed. ☐ Bill me later.

☐ Sorry, I cannot attend, but would like to make a contribution in the amount of _____.

☐ Yes, you may print my name on the sponsors' list. In the following space, please give us the exact form in which you wish your name to appear:

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american civil liberties union

~~3000 connecticut avenue nw~~
~~washington dc 20008~~

1345 E St NW, Suite 301
Washington DC 20004

American Civil Liberties Union Fund
Of The National Capital Area

SUITE 437 3000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D. C. 20008 TELEPHONE 483-3830

2462 R7E

Honorable Julius Hobson
1319 4th St. SW
Washington DC 20024

aclu
AMERICAN CIVIL LIBERTIES UNION OF THE NATIONAL CAPITAL AREA, 3000 CONNECTICUT AVENUE, N.W. WASHINGTON, D.C. 20008

Honorable Julius Hobson
District of Columbia Council
District Building
14th & E Sts NW
Washington DC 20004

November 13, 1975

Counselman Julius Hobson, Sr.
District of Columbia City Counsel
District Building
14th and E Streets, N.W.
Washington, D.C. 20004

Dear Counselman Hobson,

Enclosed is a copy of a letter from me to your Legislative Assistant, Mr. Lou Aronica. I believe Mr. Aronica deserves the praise therein and should be recognized for what he has done. I would write you if he, as a member of your staff, had been distasteful or inefficient in dealing with me; conversely, I feel a duty to write you when he has been helpful beyond what seems to be the norm. Mr. Aronica is a credit to your staff and should be commended.

Enclosure

Bernard C. Dory

November 13, 1975

Mr. Lou Aronica
Legislative Assistant to
Counsel Member Julius Hobson
District of Columbia City Counsel
The District Building
14th and E Streets, N.W.
Washington, D.C. 20004

Dear Mr. Aronica,

Indeed I blush at this belated thank you. When we last spoke the matter was still unresolved and I have been in and out of the city frequently. I wanted to make a full report to you and it was only recently afforded me. I now express my sincere appreciation for your interest and assistance in helping me help my nephew, Stephen Dory, clear administrative entanglements involved in his recent transfer to Federal City College. The college granted Stephen credits for most of the courses he had at his prior school. Naturally, Stephan's family is also elated and grateful of your efforts and their affect in this regard.

Next, I want to commend you on the very splendid attitude and involvement you exhibited with respect to this matter. Today a substantial number of people place little or no faith in the ability, attitudes and willing involvement of government and government employees with respect to solutions and/or assistance for the very people they're set-up to help. Leaders preach while citizens reach. I believe the interest and involvement you've shown in this case is not a reflection of typical government concern and dedication. Certainly, without people such as you participating as you did here--helping one person--citizens would be left to smolder in frustration, chaos and a chain of injustices. It is for these reasons that I want to impart to you a special thank you.

Bernard C. Dory

C.C.: Counselman Julius Hobson, Sr.

Bernard C. Dory
116 Emerson Street, N.W.
Washington, D.C. 20011

Counselman Julius Hobson, Sr.
District of Columbia City Counsel
District Building
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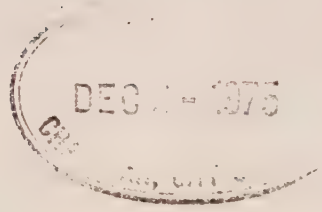
OF COUNSEL

December 5, 1975



The Honorable Sterling Tucker
Chairman of the Council of the
District of Columbia
District Building
14th and E Streets, N.W.
Washington, D.C. 20004

Dear Mr. Tucker:

You have asked us for our opinion on the respective roles of the Board of Education and the City Council under the District of Columbia Self-Government and Government Reorganization Act, Public Law 93-198 (1973). In summary, our conclusions are as follows. First, the City Council has, with two exceptions, set out below, been delegated the full legislative power over educational matters which Congress exercised in enacting Title 31 of the District of Columbia Code. Thus the

Council may undertake a thorough revision of Title 31 to improve the administration of the school system and to set broad policy guidelines. Second, the City Council has express power to change the pay and the incidents of election of the members of the Board of Education. And, third, the City Council could delegate additional powers to the Board, if it thought it desirable to do so.

The exceptions to the powers of the Council over education are that (1) the Board of Education has final authority over line-item expenditures in the school system's operating budget and (2) that the Board may not be abolished by the Council short of resort to the charter-amending process. We do not believe these exceptions significantly limit the Council's legislative power to insure that the District of Columbia has an adequate system of public education.

A chronological review of the governing legislation is required to make clear the basis for our opinion.

I. The Powers of the Board of Education

A. The Act of 1906 and Subsequent Miscellaneous Legislation

The basic legislation creating the District of Columbia Board of Education was enacted in 1906, Public Law 254, 59th Cong., 1st Sess. That Act provided:

> That the control of the public schools of the District of Columbia is hereby vested in a board of education to consist of nine members . . . .[*/]
>
> The board shall determine all questions of general policy relating to the schools, shall appoint the executive officers hereinafter provided for, define their duties, and direct expenditures.

Despite the seeming breadth of this language, vesting "control" of the schools in the Board and giving it power to determine "general policy," the actual powers delegated to the Board were quite limited. The Board's duties were to administer the schools within concrete

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*/ Under the 1906 Act the members of the Board were appointed by the Judges of the Supreme Court of the District of Columbia. In 1936, the power to appoint members of the Board was shifted to the Judges of the United States District Court for the District of Columbia, 49 Stat. 1921.

guidelines which Congress prescribed in the Act creating the Board and in accord with such legislation as Congress might subsequently enact.

Some of the congressional restrictions were narrow indeed. For example, the first section of the 1906 Act foreclosed the Board of Education from exercising discretion as to the length of the school day by mandating a whole school day session. Similarly, in the area of administration as well, the Board's powers were limited. The Board was required by statute to appoint a superintendent and a number of other specified officials. Congress even went so far as to specify the number of departments at each of the high schools in the city (e.g., eight departments at Eastern and four at Armstrong).

In later years, Congress added to the District of Columbia Code legislation which defined general school policy and directed how control of the schools was to be exercised in specific areas. The legislation covered matters such as compulsory school attendance

(§ 31-201); special programs for mentally or physically unfit students (§ 31-203); direction that the Board of Education keep daily records of attendance (§ 31-205); and a requirement that a census of school age children be made (§ 31-208).*/ Indeed, Congress found it necessary or appropriate to legislate even on such minutiae as the hours during which school buildings would have their entrances locked (§ 31-812) and an optional course in aeronautics in the senior high schools (§ 31-1201). Acts of Congress similarly set the teachers' pay scale (§ 31-1501) and the qualifications for employment (§ 31-1511).

The limited nature of the Board's "control" of the schools was underscored by the presence in Title 31 of a number of express delegations of power over education to the D.C. Commissioners rather than the

*/ Despite the existence of this provision in the D.C. Code for 50 years, no school census has ever been taken. Hearings on H.R. 15643 Before the Subcomm. on Education of the House Comm. on the District of Columbia, 93d Cong., 25 (1973) (testimony of Superintendent Scott).

Board of Education. For example, § 31-307 gave the Board of Education the authority to fix fees to be paid by non-residents of the District, but subject to the approval of the D.C. Commissioners. Likewise, the Commissioners, and not the Board, were granted the power to make rules and regulations governing the teacher retirement plan pursuant to § 31-717 and § 31-736.*/ These powers were transferred from the Commissioners to the appointed City Council in the 1967 Reorganization of the City Government, and are now held by the elected City Council.**/

From the foregoing, it seems apparent that the power granted to the Board of Education in 1906 to "control" the schools and to set general policy was little more than the power to administer within such guidelines as Congress has provided or might provide in

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*/ Other provisions of this sort may be found in Reorganization Plan No. 3, § 402, Part 20, Appendix to D.C. Code Title 1 and in § 31-104(b) (requiring the Board of Education to consult with the Mayor and the City Council).

**/ Id.; Self-Government Act § 404(a).

the future. Thus, the powers of the Board were, like the powers of the rest of the District of Columbia government, "confined to mere administration." Metropolitan RR v. District of Columbia, 132 U.S. 1, 7 (1889). Moreover, the courts construed the Board of Education's powers narrowly, holding that where "Congress has assumed to deal with [a] subject specifically and in mandatory language . . ., the Board of Education has no right to exercise discretion. . . ." Cavanagh v. Ballou, 36 F. Supp. 445 (D.D.C. 1941). It was also held that the Board may neither hire nor fire teachers without obtaining the Superintendent's recommendations, Whitwell v. United States ex rel. Selden, 58 F.2d 895 (D.C. Cir. 1932).

The scope of authority accorded the District of Columbia Board of Education by Congress in 1906 was comparable to that of the typical school board in this country. In most states, school boards are an agency of the state government for the administration of public education. See 3A C. Antieau, Municipal Corporational

Law § 30.00 (1967). As such, they "are subject to the unlimited power of the state legislature," id. at § 30C.09 and "doubts as to the existence of school district powers are resolved against the district." Id. at § 30C.08. School boards are often subject to extensive control by both a state board of education, id. at § 30C.09, and actions of the legislature governing such items as the selection of textbooks (id. at § 30C.08); the qualifications of teachers (id. at § 30C.12); the tenure of teachers (id. at § 30C.18); the procedures to be used for the discharge of educational personnel (id. at § 30C.37); and free textbooks (id. at § 30C.08). The only difference between the powers of the District of Columbia Board of Education under the 1906 Act and those of a typical school board elsewhere was that the District of Columbia Board's administrative powers were prescribed by acts of Congress, rather than by the acts of a state legislature.

B. The District of Columbia Elected Board of Education Act of 1968

By legislation enacted in 1968, Congress expanded the membership of the Board of Education from nine to eleven. More importantly, it provided that the members were to be elected, rather than appointed by Judges of the District Court. D.C. Code § 31-101(a). However, no significant changes were made in the Board's powers. In fact, the language defining the powers of the elected Board of Education was indistinguishable from that used in the 1906 Act to define the powers of the appointed Board. There is no indication in the legislative history that Congress intended by this legislation to expand the authority of the Board, and there is agreement among knowledgeable commentators that no expansion of power was effected. See, e.g., 2 Report of the Commission on the Organization of the Government of the District of Columbia, H. R. Doc. No. 92-317, 92d Cong., 2d Sess. 395 (1972) [hereinafter cited as Nelson

Commission Report]. */ ("The functions, roles, and responsibilities of the elected Board of Education, however, are essentially the same as those of its predecessor appointive Boards.") **/

In both the original 1906 Act and again in the 1968 Elected Board of Education Act, Congress made apparent its belief that the powers and duties imposed on the members of the Board were minimal by the salary it attached to the job. In the 1906 Act, Congress

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*/ The Commission on the Organization of the District of Columbia was created by Congress in September 1970 and charged with determining ways to promote economy, efficiency and improved service in the transaction of public business by the District of Columbia Government. P.L. 91-405 (1970). The Commission was chaired by Congressman Ancher Nelson, and became known as the Nelson Commission.

The Nelson Commission issued a three-volume Report in August 1972, making over 400 specific recommendations. While many of its proposals could have been implemented by the D.C. Government without the need for new legislation, the Nelson Commission called for congressional action in a number of areas.

**/ See also Part II, Hearings on D.C. Government Organization before the Subcomm. on Government Operations of the House Comm. on the District of Columbia, 93d Cong., 1st Sess. 118, 119 (1973) (Testimony of Thomas Fletcher) (the elected school board has "no additional authority

(Footnote continued on following page.)

stated that Board members were to serve without pay. In the 1968 amendments Congress authorized a salary at a rate to be set by the City Council, but in no event to exceed $1200 per year. § 31-101(b)(4).

C. The District of Columbia Self-Government Act

The District of Columbia Self-Government and Government Reorganization Act, P.L. 93-198 (1973) ("Self-Government Act") granted, for the first time since 1874, a substantial measure of home rule to the citizens of the District of Columbia. The Act delegated broad legislative powers to an elected City Council */ and vested the executive power of the City in an elected Mayor. The Self-Government Act defines the basic governmental structure of the District of Columbia in a Charter,

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(Footnote continued from preceding page.)
than they had [as] the appointed Board.") See also Hearings on H.R. 12823 before the House Comm. on the District of Columbia, 92d Cong., 2d Sess. 213 (1972)(Statement of Richard W. Clark).

*/ However, Congress expressly reserved its right to legislate for the District "on any subject, whether within or without the scope of the legislative power granted to the Council by this Act, including legislation to amend or repeal . . . any act passed by the Council." Self-Government Act § 601.

which may be amended only by Act of Congress or by Council action ratified by the vote of a majority of the registered qualified electors of the District voting in a referendum held for that purpose. Self-Government Act § 303.

The Self-Government Act incorporates, as part of the District of Columbia Charter and without substantial change, the language of § 31-101(a) vesting control of the schools in the Board of Education. See Self-Government Act § 495.*/ The virtual identity of the language indicates clearly that no new powers were accorded to the Board of Education by the new legislation. Rather, as the House Report on the Bill provides, "this subsection . . . maintains the status quo with respect to the 11 member elected Board of Education." H.R. Rep. No. 93-482, 93d Cong., 1st Sess. 35 (1973).

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*/ The only difference between D.C. Code § 31-101(a) and § 495 of the Self-Government Act is that one refers to control of "the public schools in the District of Columbia" while the other refers to "the public schools of the District of Columbia."

The sole effect of reenacting the language vesting control of the schools in the Board of Education as part of the Charter is to make the Board part of the basic structure of the city government, which may not be abolished by the Council short of resort to the Charter-amending process.

Notably, the Self-Government bill initially passed by the Senate did not contain a Charter provision dealing with the Board of Education. Had this bill become law, the statute creating an elected Board of Education would have been subject to repeal or modification by the City Council, just as is presently the case with other legislation found in the District of Columbia Code dealing with local matters. Self-Government Act § 717(b). Cf. Part II Hearings on D.C. Government Organization Before the Subcomm. on Government Operations of the House Comm. on the District of Columbia, 93d Cong., 1st Sess. 12 (1973).

Similarly, the initial version of the House bill contained no specific provision for the Board of Education. In part, the failure to include any such provision in the

House bill reflected the fact that a separate House education subcommittee was then considering a possible modification of the powers and functions of the Board of Education. See Background and Legislative History of H.R. 9056, 93d Cong., 2d Sess. at 770-771.*/

Subsequently, it became clear that the education subcommittee would not be able to finish its deliberations prior to House action on the Self-Government Act. Accordingly, Congressman Dellums proposed that a new section be inserted in the bill "simply restat[ing] the language of the 1968 bill that brought the elected school board into existence, and protect[ing] the integrity of that language." Id. at 1130. He further observed that "this provision simply continues the Board of Education unchanged . . . . Leave it as it is at this moment until such time that this body can enact

*/ This document is as yet unpublished. The citations are to page proofs available in the Committee's offices. It is conceivable that additional proofreading changes and, perhaps, changes in pagination, will occur before publication.

a new piece of legislation clearly directed at the whole issue of the nature of the autonomy of the Board of Education." Id. at 1131. There followed some discussion of whether the Dellums amendment should be limited in time, to give the education subcommittee a deadline by which to complete its deliberations. Congressman Gude, however, objected on the ground that, regardless of the Subcommittee's action, he believed the Board of Education "should have this degree of autonomy." Id. at 1136. Hence, the provision was included without a time limitation and was enacted as § 495 of the Self-Government Act in the same form as proposed by Congressman Dellums.

The effect of the provision was, as noted in the House Report, to preserve the status quo by insuring that the Board of Education could be abolished or changed only by Act of Congress or by amendment of the Charter itself. It did not enhance the Board's powers.

Congress did, however, add to the powers of the Board of Education vis-a-vis the Mayor and the City

Council in a second provision (Self-Government Act § 452) which states that the Mayor and the City Council may increase or decrease the bottom line of the Board of Education's annual budget "but may not specify the purposes for which such funds may be expended or the amount of such funds which may be expended for the various programs . . . ."*/

Prior to enactment of the Self-Government Act, the Board of Education was empowered to prepare an annual school budget. § 31-104. Nonetheless, expenditure of funds for the schools was, by statute, "under the direction and control" of the appointed Mayor and City Council. D.C. Code § 31-103. Despite this statutory language, the Nelson Commission found that in practice the division of budgetary responsibilities between the Board of Education on the one hand and the appointed Mayor and Council on the other was unclear,

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*/ This is the only other substantive provision of the Self-Government Act concerning the Board. While the Board is also mentioned in § 719, that section merely provides that the terms of the Board members are to be preserved.

with the latter officials less informed about the school budget than about budget requests for other departments and less likely to probe the details of the school budget. 2 Nelson Commission Report 397-98. Hence, the line-item control granted to the Board of Education in the Self-Government Act served to legitimize de facto power already exercised by the Board.

Other than in the budgetary area, the powers of the elected Board of Education today are substantially identical to those vested in the first appointed Board of Education under the 1906 Act: "The Board of Education has the responsibility of administering [the school] system in accordance with [the] law" set out in existing legislation, and subject to further directives embodied in future legislation. Mills v. Board of Education, 348 F. Supp. 866, 871 (D.D.C. 1972). As previously noted, this close legislative control over the Board of Education is not unique to the District of Columbia. Similar restraints are imposed on most of the school boards in this country by their state legislatures.

II. The Power of the City Council Over Education

A. In General

In contrast to the Board of Education, the City Council's powers were dramatically enhanced by the Self-Government Act. Sections 404(a) and 302 of that Act delegate to the City Council the full legislative power of the District -- a power which extends "to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this Act. . . ." This sweeping language was taken verbatim from a provision of the old Self-Government Act of 1871 (long since repealed) */ which the Supreme Court had held broad enough to delegate to the District of Columbia Council a legislative

*/ The 1871 Act was repealed in 1874 and replaced by the Commissioner form of government, which continued in substantially the same form until the Reorganization of the District government by Executive Order in 1967. See generally Newman & DePuy, Bringing Democracy to the Nation's Last Colony: The District of Columbia Self-Government Act, 24 Am. U. L. Rev. 537, 541-48 (1975) [hereinafter cited as Newman & DePuy].

power "as broad as the police power of a state." District of Columbia v. John R. Thompson Co., 346 U.S. 100, 110 (1953). Section 717(b) of the Self-Government Act confirms the breadth of the legislative grant by explicitly providing that, subject to certain restrictions which do not relate to educational matters, existing laws relating to the District passed by Congress "may be amended or repealed by act or resolution as authorized in this Act . . . ."

The Self-Government Act also grants the City Council explicit authority to create, abolish, or organize any agency in the District and to define the powers, duties and responsibilities of any such office (Self-Government Act § 404(b)). Additionally, the Council has "power to investigate any matter relating to the affairs of the District," and may compel the attendance of witnesses and the production of documents by subpoena (Self-Government Act § 413(a)).

The breadth of the powers given to the Council conforms to the stated purposes of the Act: "to delegate

certain legislative powers to the government of the District of Columbia; . . . and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters." Self-Government Act § 102(a). The powers thus delegated to the Council are considerable, for, in connection with the District of Columbia, "Congress possesse[d] . . . all powers of legislation which may be exercised by a state in dealing with its affairs . . . ." Atlantic Cleaners & Dyers, Inc. v. United States, 286 U.S. 427, 435 (1932); Berman v. Parker, 348 U.S. 26, 31 (1954). Indeed, even prior to the Self-Government Act, it had been acknowledged that "in many respects the District is more akin to a state than a municipality," Firemen's Insurance Co. v. Washington, 483 F.2d 1323, 1328 (D.C. Cir. 1973). Hence all powers usually exercised by a state legislature, with certain explicit reservations not here relevant (Self-Government Act § 602), have been transferred to the City Council.

It is apparent that if the congressional purpose of relieving Congress "to the greatest extent possible" of the burden of legislating on essentially local matters is to be realized, the City Council must undertake the full legislative role previously assumed by Congress in all relevant areas, including educational matters.

B. The Scope of the City Council's Power Over Education

1. The Lack of General Limitation on the Power

As set out above, the Self-Government Act gives to the Council legislative powers in all areas, including education, that are coextensive with the powers generally exercised by state legislatures and, in the case of the District of Columbia, previously exercised by Congress. However, as previously discussed, Section 495, a seemingly broad provision, states:

> The control of the public schools in the District of Columbia is vested in a Board of Education to consist of eleven elected members . . . .

We are aware that it might be contended that this provision, vesting "control" of the schools in the Board of Education, precludes any action by the Council which would constitute an exercise of "control" over the schools. We do not agree.*/ First, as noted above at pp. 12 - 15, § 495 merely incorporates in the Charter the language of the 1968 Elected Board of Education Act, which was taken, in turn, from the original Act of 1906, creating the Board. The purpose of § 495 was, as the House Report states, to preserve the status quo, and not to grant the Board any new powers.

The Board of Education has been vested with "control" of the schools of the District of Columbia

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*/ Our opinion on this issue is consistent with that of the leading commentators on the Self-Government Act. Newman & DePuy, Bringing Democracy to the Nation's Last Colony: The District of Columbia Self-Government Act, 24 Am. U.L. Rev. 537, 586 (1975) ("The Council would be able to exercise full legislative authority over the educational system under section 302, the general legislative grant, but would be prohibited from abolishing the Board.").

since 1906. Yet, Congress gave the Board detailed legislative guidelines on how it was to run the schools in the very Act creating the Board, and added many additional provisions, of both a specific and general nature, in later years. Thus, the Board's power to "control" the schools has never been considered by Congress to be inconsistent with close legislative supervision.*/ Rather, the Board's "control" of the schools has been interpreted as the power to administer the schools within the mandates of existing legislation and subject to further legislative changes. (See pp. 3 - 8, supra.) Accordingly, there is nothing in § 495

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*/ On the other hand, it is clear that Congress did not consider its legislation on educational matters to be a pro tanto repeal of the Board's power of control over the schools, for it reenacted the "control" language in the 1968 Elected Board of Education Act, after enacting a whole variety of legislation on educational matters. Nonetheless, Congress continued to legislate on educational matters after passage of the 1968 Act, and, indeed, after passage of the Self-Government Act. See, e.g., § 31-121 (Supp. II 1972) (education of pages); § 31-725(e) (Supp. II 1975) (annuities for teachers); § 31-1119 (Supp. II 1975) (driver education program); § 31-1120 (Supp. II 1975) (transportation of handicapped children); and § 31-1801 (Supp. II 1975) (interstate agreement on the qualification of educational personnel).

of the Self-Government Act inconsistent with the Council exercising an active legislative role in educational matters of the sort previously undertaken by the Congress.

Second, a reading of § 495 to bar Council action in the area of education would be inconsistent with the express purpose of § 495 to "maintain the status quo" as to the Board of Education's powers. H. R. Rep. No. 93-482 at 35. Congress has, by the Self-Government Act, announced its wish to avoid deliberating on local matters. If the Council were unable to assume the legislative role in educational matters previously filled by Congress, the practical result would be a vacuum of legislative power and a concomitant increase in the de facto power of the Board. What was conceived of as a part-time Board of Education, and compensated as such, would now -- unlike school boards in the rest of the country -- be free of effective legislative oversight. It is inconceivable that Congress intended to work such a sweeping change by a provision which it stated would merely preserve the status quo.

2. The Need for Legislative Revision

There can be little doubt that Title 31 of the District of Columbia Code is badly in need of revision and codification. It contains a conglomeration of statutes enacted by Congress over the years. A number of its provisions appear to be so specific as to interfere with the discretion which principles of good administration would lodge in the Superintendent and the Board of Education. For example, it would appear desirable for the Board of Education to be free to organize the teachers at Eastern High School into fewer or greater than eight departments, without an apparent violation of statute (§ 31-112), and to be free of statutory restraints on the time when the entrances to school buildings shall be unlocked (§ 31-812).

Moreover, Title 31 abounds with references to the segregated school system which once existed in this city. See, e.g., §§ 31-110, -115, -1109 et seq. The continuation of this language in the Code, where it has

the apparent force of law, is patently offensive to the vast majority of the District's citizens, black and white.

In addition to the provisions discussed above which probably should be repealed outright, Title 31 contains provisions which are, or may in the future be, in need of amendment. For example, there would seem to be a general consensus within the community that the provisions of § 31-108, "Removal of Superintendent," have proven to be inadequate in practice. Conversely, the entry qualifications of teachers and other educational personnel defined by statute may need modification § 31-1511 (Supp. II 1975).

An example of an existing legislative void was recently presented in conjunction with proceedings to remove the former Superintendent from office. At one stage in those proceedings, there was discussion of the feasibility of the Superintendent's voluntarily resigning in return for a commitment by the Board to pay all or a portion of the salary called for under her contract.

The Board of Education believed itself unable to undertake the settlement without legislative authorization. All parties, involved, including Corporation Counsel and counsel for the House District Committee, concurred in the position that the City Council had the power to enact the necessary authorizing legislation.

Indeed, in several educational areas, Council action is either required by or implicit in the statutory scheme. Self-Government Act § 422(3) requires the City Council to enact a new District personnel system by 1980. That personnel plan, as recommended by the Nelson Commission, would include the noneducational employees of the Board of Education, and may require a uniform system of administration for all District employees, regardless of their jobs. 2 Nelson Commission Report 640-641.

Another area in which new legislation will be required in the future is the rate of pay of teachers and other educational personnel. The current pay scale was created by Act of Congress, and is codified at

§ 31-1501 (Supp. II 1975). It cannot be changed except by superseding legislation. Congress clearly intended for the Council to take the leading role on the issue of all future pay increases, for it required the Board of Education to submit to the Mayor and City Council information on the change in the cost of living and a comparison of the rates of pay of teachers in the District and in other cities. § 31-1501a (Supp. II 1975).

Matters of the sort discussed above would appear to be precisely those which Congress intended to include in its delegation to the City Council of legislative powers extending "to all rightful subjects of legislation within the District" (Self-Government Act § 302). We find it inconceivable that a Congress which delegated legislative powers in the broadest terms to avoid the necessity for passing on such things as the legality of kite-flying on the Mall (P.L. 91-358, § 802 (1970)) expected that it would still have to recodify Title 31 to remove references to segregated schools or to consider the hours the doors of the schools in the District of

Columbia should be unlocked. The overriding purpose of the Act -- to save Congress the burden of legislating on local matters -- compels the conclusion that the legislative power over education generally exercised by state legislatures vis-a-vis school boards and which in the case of the District of Columbia had been exercised by Congress, has been transferred in full to the City Council. The Council has the authority to repeal legislation which is unnecessary or offensive; to amend legislation which is unworkable or which no longer responds to the educational needs of the community; and to enact new legislation of the same general nature as previously passed by Congress. Included in the Council's power is the authority to legislate on matters of general educational policy of the sort reflected in prior congressional action such as that requiring the Board to implement special programs for handicapped students (§ 31-203). */

*/ Mills v. Board of Education, 348 F. Supp. 866 (D.D.C. 1972).

Our view that the Council has succeeded to the legislative power previously exercised by Congress in educational matters does not leave the "control" provision of § 495 without meaning. That section's intended purpose and effect was, as described above (at pp. 12 - 15), to preserve the Board of Education as an administrative instrumentality of the District of Columbia government and to insulate it from repeal by ordinary legislative action.

C. The City Council's Power Over the School Budget

As previously noted, § 452 of the Self-Government Act gives the Council the authority, subject to congressional review, to establish the total amount of funds which will be allocated to the Board of Education, but deprives the Council of the power to specify the purposes for which such funds may be expended or the amount of funds which may be spent on any particular program. For the reasons set forth below, we believe this provision does not bar careful Council scrutiny of the Board of

Education's operating budget on a line-by-line basis, and does not apply to the Board's capital budget.

1. Council Scrutiny of the Operating Budget

Section 452 of the Self-Government Act is based on the Report of the Nelson Commission.*/ The Report makes clear that the Commission's recommendation that the Board of Education be given final line-item budget authority was not intended to suggest that the City Council abdicate its responsibility to keep informed as to school affairs in general or the details of the school budget in particular. Rather, the Report urges that members of the "Council must involve themselves in much greater depth in reviewing and analyzing the elements that make up the Board of Education budget before [they] arrive at their judgments as to the total amount to be allowed for the schools." Id. at 383. The Nelson Commission Report stated that such involvement was imperative so that the City Council could make an informed

*/ 2 Nelson Commission Report 399-401.

decision in allocating funds between the schools and other city programs. See also S. Rep. No. 93-219, 93d Cong., 1st Sess. 8 (1973). (The Council should "have the responsibility for determining the general allocation of resources to meet the various needs of the District.") Hence, the City Council not only has the power to involve itself in detail in the expenditure of funds for schools, but it was the intent of Congress that it do so.

In examining the Board of Education's operating budget, the Council may seek the assistance of the District of Columbia Auditor. The Auditor is authorized by § 455 of the Self-Government Act to "conduct a thorough audit of the accounts and operations of the government of the District," and may have access to all documents "belonging to or in use by any department, agency, or other instrumentality of the District government necessary to his work." In our view, this language authorizes the Auditor to review the school budget.

The Council may facilitate its review of the school budget by exercising its investigative power, which extends to "any matter relating to the affairs of the District." Self-Government Act § 413(a). Moreover, the Council has subpoena power to force obedience to its requests at a hearing or any other proceeding convened pursuant to its investigative authority. Id.

2. The Capital Budget

The Self-Government Act contains separate provisions governing submission of an annual budget (§ 442) and a multi-year capital improvement plan (see §§ 443 and 444). Section 452, which grants line-item control to the Board of Education speaks only to the annual budget; it does not relate to the multi-year plan or to the capital improvement plan. Thus, while the legislative history on this point is meager, it would appear that the line-item control provisions of § 452 were intended to relate only to the Board's operating budget and not to the school system's capital budget.

Traditionally, separate capital and operating budgets have been submitted by the Board of Education. And while the Board has asserted the power to resist the City Council on line-item changes in the operating budget, it has not done so in the case of the capital budget. */ Significantly, the method of financing capital improvements gives the City Council a de facto line-item authority. Capital improvements are usually financed by the issuance of general obligation bonds. Under § 462 of the Self-Government Act, the Council must specify the project to be financed by the bond and the maximum amount of the indebtedness which may be incurred for that project. Where a capital improvement is financed by a general obligation bond earmarked for that specific project, the Board of Education would be unable to reprogram funds.

---

*/ In part, this may reflect the fact that the capital budget, composed of a relatively small number of discrete projects with a dollar figure attached to each, is not readily amenable to reprogramming of funds.

rather than by the Board of Education; that school nurses are under the Department of Human Resources; and that certain security functions for the schools are carried out by the Metropolitan Police Department. It is within the reorganization power of the City Council to transfer functions of this sort -- which are arguably within the jurisdiction of both the Board of Education and another District agency -- to the Board or to transfer additional functions of the same sort from the Board to other District agencies.

E. The Power of the City Council Over the Salaries of Board of Education Members and the Election of Members of the Board of Education

The salary of the Board of Education members is, by statute, fixed at a rate to be set by the City Council but not to exceed $1200 per year. § 31-101(b)(4). The City Council may, of course, exercise its power under this provision. In addition, the Council has the power to amend § 31-101 to allow higher salaries for Board of Education members should that be thought appropriate or necessary to attract qualified candidates.

Similarly, the City Council may exercise its authority "to enact any act or resolution with respect to matters involving or relating to elections in the District" (Self-Government Act § 752) to change the date or other incidents of election to the Board of Education not otherwise specified as part of the Charter by § 495 of the Self-Government Act.

F. The Council's Authority to Delegate Powers

A survey by The National School Boards Association of 51 large city school districts indicates that 37, or approximately 70%, were fiscally independent of local governments in the period 1973-1974. */ Congress has had under consideration for some time the question of whether or not to grant a degree of fiscal autonomy to the District of Columbia Board of Education. We do not address here the wisdom of such an idea. We would note,

*/ The National School Boards Association, Survey of Public Education in the Nation's Big City School Districts 9 (March 1975).

however, that should the Council believe this desirable, it need not await congressional action. Rather, under the broad legislative powers granted to it, the Council could delegate part of its taxing powers to the Board of Education. Similar delegations of taxing powers by state legislatures to independent school districts are common and have been sustained. San Antonio School District v. Rodriguez, 411 U.S. 1, 7 (1973); Moore v. School District of Pittsburgh, 338 Pa. 466, 13 A.2d 29 (1940); Berkeley Unified School District v. City of Berkeley, 141 Cal. App.2d 841, 297 P.2d 710 (1956). See also 16 E. McQuillin, The Law of Municipal Corporations § 40.07 (3d Edition 1972 Rev.); Newman & DePuy, supra, 24 Am U. L. Rev. at 638-43.

III. Conclusion

The Self-Government Act expanded the powers of the Board of Education in only one respect -- by giving it the final authority over line items in the school system's operating budget. In contrast, the powers of the City Council were greatly expanded. The Act

delegated to the Council the ample and frequently exercised legislative powers over education previously held by Congress. With the exception of the power to abolish the Board of Education and to control line-item expenditure in the annual budget, the Council may exercise the same authority over the schools, both in matters of administration and in setting general guidelines for educational policy within which the Board must operate, as had been exercised previously by Congress.

Sincerely,

ARNOLD & PORTER

By _____
James A. Dobkin

Kenneth A. Letzler
Kenneth A. Letzler

Mail Routing Slip

Date: 1/25/76

To: Councilmember Julius Hobson

Comments:

Pat Miner:

Lou Aronica:

Sandy Brown: Antioch Law Graduation Ceremonies 2/13/76

Lorraine McCottry: maybe - answer yes & remind Julius later

Alice Blue:

3 presiding ceremony

Deans Edgar S. and Jean Camper Cahn,
Project Director William Statsky
and the Legal Technician Graduates of the

Class of 1976

of the

Antioch School of Law

Invite you to attend

Legal Technician Program

Graduation Ceremonies
On Friday afternoon the thirteenth of February
at three thirty o'clock

Antioch School of Law
1624 Crescent Place N.W.
Washington, District of Columbia

Reception immediately following ceremony

February 9, 1976

Mr. Ahuruezenmu Anyatonwa
Grade 6
Petworth Elementary School
8th and Shepherd Streets, N.W.
Washington, D.C. 20011

Dear Ahuruezenmu:

I agree with you that smoking is not good for one's health. I used to smoke a pipe but now I have stopped, so I hope you will be glad.

Let me welcome you to America. I hope you are making new friends and do not miss your home in Aba, Nigeria too much.

Thank you for writing to me of your concerns for the health and well being of people who smoke. I will certainly do all I can as a member of the City Council to encourage everyone to be aware of the dangers of smoking.

Sincerely,

Julius W. Hobson
Councilman at Large

576 - 6168
Boy (Age 7 yrs)
Akuneze Emmanuel Anyatonwu
Grade 6
Aba Nigeria

Eleventh Avenue
8th & Lexington
Minneapolis
Minn.
January 5, 1963

Dear Mr Hawkins

I am Akuneze Emmanuel Anyatonwu
[illegible] I am writing to you because I [illegible]
[illegible] writing to about many [illegible] I make [illegible]
a life of enjoyment of life we [illegible] life.
Sending a pet good for me [illegible] if you [illegible]
I am asking you to [illegible] it is not good for you
and to your [illegible] life and many of you [illegible]
I will be glad if you [illegible]
[illegible]

Room 206 -

137 -
7121 -

7
5 16

6168

Rm 206

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
PETWORTH ELEMENTARY SCHOOL
8TH AND SHEPHERD STREETS, N. W.
WASHINGTON D.C. 20011

Mr. Hoosen

District Building

14th & E Street N.W

Washington, D. C. 20002

Aronica

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20004

March 5, 1976

Councilmember Julius W. Hobson
D.C. City Council
District Building
Washington, D.C. 20004

Dear Julius:

This letter is to confirm that as of 4:30 P.M. today I am resigning my position as aid on the Committee on Education, Recreation and Youth Affairs of the Council. I plan to file petitions for the D.C. Statehood Party candidate for the position of non-voting delegate to the House of Representatives. Since it is not clear that it is legal or proper for me to continue my employment for the D.C. City Council and file for this political office, I offer my resignation effective today before I file. Thank you for the opportunity to work with you and the help you have given me.

Sincerely,

Lou Aronica

cc: Pat Miner Evans, Committee Clerk
Robert Williams, Secretary to the Council

RECEIVED

MAR 5 1976

Julius Hobson, Sr.
Councilmember-At-Large

Anti-Apartheid Committee for
Selective Purchasing
1500 Farragut St., NW
Washington, D.C. 20011

Co-sponsors of the Anti-Apartheid Resolution

Dear Council Member:

The D.C. City Council will soon be voting on the Anti-Apartheid Selective Purchasing Resolution, calling for an end to future purchases from Control Data, IBM, ITT and Motorola.

On February 10th, Council Chairman Tucker circulated a memo entitled "Additional Materials on the Apartheid Hearing" containing, among other things, documents from the Executive Branch on the fiscal and operational impact of the resolution.

Due to a serious misinterpretation of the resolution by various parties, the report from the Executive Branch contains much misleading information and erroneous conclusions.

We therefore wish to bring the following points to your attention:

1. <u>The resolution calls for selective purchasing in future procurement--not for the "conversion" of presently owned systems</u>.

   The report from the Office of Budget and Management Systems (computer systems office) stated that the resolution would cost the city up to $60 million and a 4½ year arrest of systems development. Unfortunately, this conclusion is based on the entire conversion of city operations from previously purchased IBM equipment to non-IBM equipment. The resolution <u>does not call</u> for that action.

   In fact, the computer report does state that "... there is no reason to believe that equipment replacing IBM equipment would differ substantially in either purchase or lease cost." It can thus be concluded from the Executive Branch's report that selective purchasing in future data processing procurement would indeed entail no significant cost to the city.

2. <u>Replacement parts and services needed to continue the efficient operations of previously purchased equipment from the four firms, could--and should--be excluded from the boycott</u>.

   The Anti-Apartheid Committee has recommended a refinement of the resolution allowing the purchase of services, supplies and replacement parts which are only available from the four firms and which are necessary to continue the efficient operations of previously purchased equipment.

3. Equity on leased computer equipment where "option to buy" arrangements have been made can be protected.

   The Anti-Apartheid Committee suggests that a simple amendment state that any transaction such as a lease/purchase option arrangement, enacted before the passage of the resolution be exempt from the boycott restrictions to preserve the potential credit already earned. After the passage of the resolution, however, no new lease/purchase option arrangements would be allowed.

4. ATT is not affiliated with ITT.

   Despite the common confusion, such as in the Executive Branch report, ATT is not in anyway related to ITT. The boycott thus will not impact any telephone equipment.

Unfortunately the report from the Executive Branch did not deal with the nature of the resolution at hand. The anti-apartheid resolution calls for: 1) the end to any future purchasing with Control Data, IBM, ITT and Motorola (and can exclude the services and replacement parts which are necessary to maintain operations, and protect equity) and 2) calls for the subsequent use of alternative sources for the products of these firms.

The Anti-Apartheid Committee for Selective Purchasing feels that a reasonable, feasible and well documented proposal has been presented to the D.C. City Council concerning our community's relation to major U.S. corporations operating in our city that also are supporting apartheid in South Africa.

However, to more clearly address the questions raised in certain quarters and to further clarify the intent of the resolution, the Anti-Apartheid Committee has prepared a redraft of the anti-apartheid resolution. It is our belief that this refinement of the resolution will help ensure its passage in the near future.

We thank you for your continued support and offer to assist with any further questions you may have on this issue.

Sincerely,

Courtland Cox

Courtland Cox

Proposed redraft of the Anti-Apartheid Selective Purchase Resolution
submitted by: the Anti-Apartheid Committee

A RESOLUTION

to call upon the District of Columbia City Government to cease doing unrestricted business with certain companies that assist and perpetuate apartheid in South Africa

Resolved by the Council of the District of Columbia, that

Sec. 1) This resolution may be cited as the Anti-Apartheid Selective Purchase Resolution.

Sec. 2) The Council of the District of Columbia recongnizes that certain multi-national corporations in their international operations in exploitive social systems such as South Africa's apartheid transgress the human rights principles of Washington, D.C., as expressed in Title 34; local businesses, in compliance with Title 34, are often forced to face in a competitive market those businesses who choose to ignore our human rights standards.

Sec. 3) The Council of the District of Columbia finds and has carefully considered and accepted research done on the conditions in South Africa.

Sec. 4) Research has surfaced specific data which has singled out Control Data, IBM, ITT and Motorola as strategic companies in the apartheid system, using the criteria of companies having:

1. a substantial investment in a wholly owned subsidiary,
2. a low level of African employment,
3. a number of significant contracts with the South African government strategic to the continuance of apartheid.

Sec. 5) The Council of the District of Columbia accepts and approves the unanimous vote by the D.C. Council of Churches to invoke a selective purchasing policy against Control Date, IBM, ITT and Motorola, and their call upon all other morally and socially responsible persons and agencies to do likewise.

Sec. 6) Be it therefore resolved that this Council deplores the presence of Control Data, IBM, ITT and Motorola, and every U.S., European and Japanese corporation doing business in South Africa; their investment and technology support and entrench the minority regime and enable the minority to maintain its repressive control over the majority and facilitates its enforcement of apartheid, and is therefore condemned.

Sec. 7) Be it further resolved that the Council of the District of Columbia calls upon the D.C. Government, and every one of its agencies, commissions, boards, bureaus and offices to stop all future dealings with Control Data Corporation, IBM, ITT and Motorola--until such time that these corporations have terminated all operations, direct and indirect, with or in (1) South Africa and (2) Namibia, so long as South Africa continues to occupy Namibia--with the only exceptions being:

1) service contracts for previously purchased equipment,
2) replacement parts and supplies for any previously purchased equipment which is not available from alternative sources,
3) the use of accrued credit from "option to buy" lease arrangements negotiated before the passage of the resolution;

and the Council calls upon the D.C. Government to advise each of these corporations at least ninety days from the acceptance of this resolution that it will no longer do business with them, with allownace for the three previously designated exceptions.

October 12, 1976

Honorable Harry T. Alexander
Judge
Superior Court of the District
of Columbia
Washington, D.C. 20001

Dear Harry:

Thank you for your letter and the copy of your Statement to the Press. I am sorry to hear that you are not seeking reappointment to the Superior Court because the City needs your services in its judicial system.

However, please accept my best wishes for your future plans.

Sincerely,

Julius W. Hobson

October 12, 1976

Honorable Harry T. Alexander
Judge
Superior Court of the District
of Columbia
Washington, D.C. 20001

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However, please accept my best wishes for your future plans.

Sincerely,

Julius W. Hobson

Superior Court
of the District of Columbia
Washington, D. C. 20001

Harry Toussaint Alexander
Judge

September 20, 1976

The Honorable Julius W. Hobson, Sr.,
Councilman
Council of the District of Columbia
District Building
14th & "E" Streets, N.W.
Washington, D.C. 20004

Dear Councilman Hobson:

I thought you might appreciate a complete copy of my Statement to the Press.

Cordially,

Harry T.

Harry Toussaint Alexander

Encl. 1

Many thanks for your continued support over the years.
Kind Bless.

Superior Court of the District of Columbia
Chambers of Judge Harry Toussaint Alexander

FOR RELEASE: September 10, 1976 5:00 p.m.

MEDIA STATEMENT OF JUDGE HARRY TOUSSAINT ALEXANDER

Upon reconsideration of my earlier position and following prolonged deliberation, I have, on this date, advised the President of the United States of my retirement from judicial office effective November 2, 1976. I have also, on this date, instructed the District of Columbia Commission on Judicial Disabilities and Tenure to withdraw my declaration of candidacy for reappointment to the Superior Court of the District of Columbia. My lovely wife and wonderful children concur in what is for our family a difficult decision.

Primarily because of financial reasons, and a desire to speak out on today's issues, unrestricted by the judicial robe, I have chosen not to seek reappointment for a second term on the Bench. The decision, however, is not without mixed emotions.

The past 10 years on the Superior Court bench have been for me a unique and fullfilling experience. My 1949

M O R E

application for admission to Georgetown Law School stated that I hoped to effect changes in the legal system. Of course, momentous legal precedents most often result from appellate action, rather than at the trial judge level. But in hundreds of large and small ways, the daily operations of a trial court determines the quality of justice administered for the people.

I am therefore grateful to have had the opportunity to have made the following contributions toward improving the quality of justice in the District of Columbia:

(1) The appointment of free counsel to indigents in Small Claims and Landlord and Tenant Branches;

(2) The elimination of unnecessary racial designations in court documents;

(3) The expungement of unjust arrest records;

(4) The curtailment of retaliatory prosecutions against those who complained of police brutality;

(5) The exoneration of numerous police officers wrongly accused of brutality;

(6) Insisting that all persons appearing in my courtroom be treated with dignity, requiring that all citizens be addressed as "Mr." and "Mrs."

(7) Ending the practice of police officers sitting in the jury box rather than with other witnesses, and

(8) Increasing the facilities for treatment of alcoholics.

I want publicly to express my affection for the many people who encouraged me. Among these gallant people, too numerous to mention, are my wonderful wife and family who sustained me over many years; my Chief Judge, Harold H. Greene, and Chief Judge Gerard D. Reilly, from whom I could seek counsel; the courageous lawyers who volunteered to represent me and my high ideals, the late Civil Rights Advocate Frank Reeves, the late Honorable David G. Bress, James H. Cobb, Esq., and Ralph Temple, Esq., the law firm of McDaniel, Burton, Daniels and Brady, Claude Roxborough, Esq., B. Franklin Kersey, IV, Esq., Jan Peterson, William McLain and my friend and counsel, Benton L. Becker, Esq.

My sincere gratitude must, of course, be extended to Xavier University of New Orleans, Louisiana, and Georgetown University which prepared me for my legal career; but foremost for my philosophy of life. Nothing could have been more important than the latter.

To the late President John F. Kennedy, and his brother, the late Honorable Robert F. Kennedy; the Honorable Herbert J. Brownell, the late Honorable Leo A. Rover, the Honorable Oliver Gasch, the Honorable David A. Acheson, the Honorable Nicholas J. Katzenbach, I extend my debt of gratitude for their affording me the opportunity of representing the greatest government in the world, in several Circuits, in the District of Columbia, across many cities and in Puerto Rico.

To Chief Judge David L. Bazelon, and Judge J. Skelly Wright of the United States Court of Appeals for the District of Columbia Circuit, to the late Judge Alexander Holtzhoff, Judge Burnita S. Matthews, and Judge John J. Sirica, and other judges who taught me the majesty and dignity of the courtroom, and the necessity for skilled and quality advocacy, on the trial as well as the appellate level, I am eternally grateful. But certainly, no one did more for my legal career than the saintly Honorable Andrew J. Howard, who nutured me early as an Assistant United States Attorney, and administered to me the Oath of Office on three separate occasions.

M O R E

To the late Civil Rights President Lyndon B. Johnson, and the Honorable Ramsey Clark, I extend my heartfelt appreciation for affording me the privilege of judicial office; but first that of First Assistant United States Attorney.

My expressions of gratitude would not be complete without mentioning Mr. Justice Douglas who not only expressed his empathy, but sympathized with my personal struggles in his 1973 dissent in Palmore v. United States. His understanding will forever be appreciated, and I wish him a speedy recovery from his present illness.

Words cannot express the deepest gratitude I have to ministers and hierachy of many denominations, who have counseled and consoled me through the years; to the many organizations and thousands of people, the church, civic, professional and fraternal organizations who have given their support--the Yango Sawyers, as well as the Lillian Wiggins', the Calvin Rolarks', the Black Caucus, the City Council, and Members of the Board of Education. The courage they gave helped to fortify my concern, commitment, and conviction for improving the quality of justice.

Finally, through all of this, it is fitting and proper to acknowledge God and my nine year old departed Beatrice Ann; for they have been my guiding lights; my refuge in the storm, my comfort in the hours of darkness. She and He have been the rock and the staff.

In looking back, I believe that what I most enjoyed in being a judge was the opportunity to help the steady flow of people who came to my chambers during the past 10 years seeking help in their frustrations with the administration of justice. This multitude of small victories over inequality meant the world to me.

It is my intention to continue to work toward the elimination of discriminatory practices and effecting equal justice under law. I shall do so through teaching, publications, the private practice of law, and through our political machinery, until equity and equality are indeed realities, and all people are free to enjoy their God-given constitutionalized rights.

President Kennedy once said, "A journey of a thousand miles must begin with the first step." For the past ten years, in some small measure, I have taken that first step. With God's help, I shall continue.

* * * * * * * * *

FRED ARANHA, DIRECTOR OF SERVICES

Lorraine McCottry, Adm. Asst. to Mr. Hobson

January 10, 1977

Pick-up from Civil Service for Mr. Hobson

Would you please have a letter picked up from the U.S. Civil Service Commission, 19th and E Streets, Room 1347 (First Floor) for Mr. Hobson from Miss Doris Young. The letter will be ready between 2:30 and 3:00 p.m. today.

The letter will come to me.

THANK YOU VERY MUCH FOR THIS SERVICE.

(Note: Miss Young's telephone number is: 632-6866 if the driver would like to call to be sure the letter is ready before leaving the building.)

Audiology

Council of the District of Columbia
Notice of Public Hearing

City Hall, 14th and E Streets, N.W. 20004 Fifth Floor 638-2223 or Government Code 137-3806

January 19, 1977

REGULATION OF AUDIOLOGISTS, SPEECH PATHOLOGISTS, AND HEARING AID DEALERS

Councilmember John A. Wilson, Chairperson of the Committee on Public Services and Consumer Affairs, announces public hearings on Bill 2-9, "Practice of Audiology and Speech Pathology Act of 1977," introduced by Councilmember Julius W. Hobson, and Bill 2-39 "Hearing Aid Consumers and Dealers' Act," introduced by Councilmember John A. Wilson. The hearings will be held on:

March 16, 1977, at 10:00 A.M. and 2:00 P.M.

The hearings will take place in the Council Chambers, Room 500 of the District Building, 14th & "E" Streets, N.W., Washington, D.C. 20004.

In the District alone there are about 75,000 people with hearing or speech disorders. Currently there is no regulatory authority in the District of Columbia to insure that these people are receiving adequate service. By enacting the provisions in Bill 2-9 and Bill 2-39, the Council would create licensing and examining procedures for audiologists, speech pathologists and hearing aid dealers and would provide contract protections to hearing aid consumers.

People wishing to testify should contact Barbara Grau at 724-8013 or 724-8113 by the close of business on Friday, March 11, 1977. Written statements should also be submitted by that date. Written statements by persons not appearing at the hearings should be submitted to Robert Williams, Council Secretary, District Building, 14th & E Streets, N.W. Washington, D.C. 20004.

Copies of the bill may be obtained by calling the Council's Legislative Services Unit, 724-8051.

AMERICAN CIVIL LIBERTIES
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